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MONTANA LEGISLATIVE HISTORY

Chapter N/A 19 89

Bill H _____ S 327 Original bill & history ✓ C

H. Committee on Natural Res		S. Committee on Natural Res.	
Hearing Date(s) 3-15	✓ C	Hearing Date(s) 2-10	✓ C
-	C	2-15	✓ C
_____	C	_____	C
_____	C	_____	C
Date Out _____	C		

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SENATE FINAL STATUS

SB 325 INTRODUCED BY YELLOWTAIL, ET AL.
COMPENSATE ARTS COUNCIL FOR SERVICES AND TRAVEL

2/02	INTRODUCED		
2/02	REFERRED TO STATE ADMINISTRATION		
2/04	FISCAL NOTE REQUESTED		
2/10	FISCAL NOTE RECEIVED		
2/10	HEARING		
2/11	FISCAL NOTE PRINTED		
2/13	COMMITTEE REPORT--BILL PASSED		
2/15	2ND READING PASSED	50	0
2/17	3RD READING PASSED	46	4
	TRANSMITTED TO HOUSE		
2/21	REFERRED TO STATE ADMINISTRATION		
3/15	HEARING		
3/15	COMMITTEE REPORT--BILL CONCURRED		
3/18	2ND READING CONCURRED	57	31
3/20	3RD READING CONCURRED	58	40
	RETURNED TO SENATE		
3/27	SIGNED BY PRESIDENT		
3/27	SIGNED BY SPEAKER		
3/28	TRANSMITTED TO GOVERNOR		
3/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 385 EFFECTIVE DATE: 10/01/89		

SB 326 INTRODUCED BY YELLOWTAIL
ALLOW REFUND OF GAS TAX ON BULK KEYLOCK OR CARDTROL PURCHASES

2/02	INTRODUCED		
2/02	REFERRED TO TAXATION		
2/04	FISCAL NOTE REQUESTED		
2/08	HEARING		
2/08	FISCAL NOTE RECEIVED		
2/09	FISCAL NOTE PRINTED		
2/09	COMMITTEE REPORT--BILL PASSED		
2/11	2ND READING PASSED	29	12
2/14	3RD READING PASSED	35	12
	TRANSMITTED TO HOUSE		
2/21	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
3/13	HEARING		
3/13	COMMITTEE REPORT--BILL CONCURRED		
3/15	2ND READING CONCURRED	69	14
3/16	3RD READING CONCURRED	85	10
	RETURNED TO SENATE		
3/22	SIGNED BY PRESIDENT		
3/22	SIGNED BY SPEAKER		
3/23	TRANSMITTED TO GOVERNOR		
3/28	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 356 EFFECTIVE DATE: 3/28/89		

SB 327 INTRODUCED BY KEATING, ET AL.
EXEMPT CERTAIN AGENCY ACTIONS FROM REQUIREMENTS OF MONTANA ENVIRONMENTAL POLICY ACT

2/02 REFERRED TO NATURAL RESOURCES
2/10 HEARING
2/16 COMMITTEE REPORT--BILL PASSED
2/18 2ND READING PASSED 26 24
2/21 3RD READING PASSED 29 21

TRANSMITTED TO HOUSE
2/22 REFERRED TO NATURAL RESOURCES
3/15 HEARING
3/15 TABLED IN COMMITTEE

SB 328 INTRODUCED BY HARDING
PROVIDE FOR LICENSING OF EMBALMERS

2/02 INTRODUCED
2/02 REFERRED TO STATE ADMINISTRATION
2/03 FISCAL NOTE REQUESTED
2/09 FISCAL NOTE RECEIVED
2/10 HEARING
2/10 FISCAL NOTE PRINTED
DIED IN COMMITTEE

SB 329 INTRODUCED BY CRIPPEN
REVISE EMINENT DOMAIN

2/02 INTRODUCED
2/02 REFERRED TO JUDICIARY
2/03 FISCAL NOTE REQUESTED
2/08 FISCAL NOTE RECEIVED
2/09 FISCAL NOTE PRINTED
DIED IN COMMITTEE

SB 330 INTRODUCED BY BECK, ET AL.
SUSPEND INSURER CERTIFICATE FOR UNLICENSED AGENTS

2/03 INTRODUCED
2/03 REFERRED TO BUSINESS & INDUSTRY
2/09 HEARING
2/11 COMMITTEE REPORT--BILL PASSED
2/14 2ND READING PASSED 47 0
2/16 3RD READING PASSED 48 0

TRANSMITTED TO HOUSE
2/21 REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT
3/03 HEARING
3/03 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
3/06 2ND READING CONCURRED 86 5
3/07 3RD READING CONCURRED 92 4

RETURNED TO SENATE WITH AMENDMENTS
3/11 2ND READING AMENDMENTS NOT CONCURRED 35 0
3/14 CONFERENCE COMMITTEE APPOINTED
3/20 CONFERENCE COMMITTEE DISSOLVED

HOUSE
3/16 CONFERENCE COMMITTEE APPOINTED
3/22 CONFERENCE COMMITTEE DISSOLVED

SENATE
3/20 FREE CONFERENCE COMMITTEE APPOINTED

LC 1167/01

BILL NO. 327

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING CERTAIN ACTIONS BY AGENCIES OF STATE GOVERNMENT FROM REQUIREMENTS OF THE MONTANA ENVIRONMENTAL POLICY ACT; ALLOWING AGENCIES TO FIND ON A CASE-BY-CASE BASIS THAT AN EXEMPTED ACTION OR COMBINATION OF ACTIONS IS A MAJOR ACTION SIGNIFICANTLY AFFECTING THE QUALITY OF THE HUMAN ENVIRONMENT; REQUIRING AGENCIES TO ADOPT THIS FINDING AS A DECLARATORY RULING PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTIONS 2-4-501 AND 75-1-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-1-201, MCA, is amended to read:

"**75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state shall be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except as provided in ~~subsection~~ subsections (2) and (4), shall:

(i) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(ii) identify and develop methods and procedures which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(iii) include in every recommendation or report on proposals for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(C) alternatives to the proposed action;

(D) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(E) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(iv) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal

INTRODUCED BILL

SB327

which involves unresolved conflicts concerning alternative uses of available resources;

(v) recognize the national and long-range character of environmental problems and, where consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(vi) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(vii) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(viii) assist the environmental quality council established by 5-16-101; and

(c) prior to making any detailed statement as provided in subsection (1)(b)(iii), the responsible state official shall consult with and obtain the comments of any state agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate state, federal, and local agencies which are authorized to develop and enforce environmental standards shall be made

available to the governor, the environmental quality council, and the public and shall accompany the proposal through the existing agency review processes.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) Until the board of oil and gas conservation adopts a programmatic environmental statement, but no later than June 30, 1989, the issuance of a permit to drill a well for oil or gas is not a major action of state government as that term is used in subsection (1)(b)(iii).

(b) The board of oil and gas conservation shall adopt a programmatic statement by June 30, 1989, that must include but not be limited to:

(i) such environmental impacts as may be found to be associated with the drilling for and production of oil and gas in the major producing basins and ecosystems in Montana;

(ii) such methods of accomplishing drilling and production of oil and gas as may be found to be necessary to avoid permanent impairment of the environment or to mitigate long-term impacts so that the environment and renewable resources of the ecosystem may be returned to either conditions similar to those existing before drilling or production occurs or conditions that reflect a natural

progression of environmental change;

(iii) the process that will be employed by the board of oil and gas conservation to evaluate such environmental impacts of individual drilling proposals as may be found to exist;

(iv) an appropriate method for incorporating such environmental review as may be found to be necessary into the board's rules and drill permitting process and for accomplishing the review in an expedient manner;

(v) the maximum time periods that will be required to complete the drill permitting process, including any environmental review; and

(vi) a record of information and analysis for the board of oil and gas conservation to rely upon in responding to public and private concerns about drilling and production.

(c) The governor shall direct and have management responsibility for the preparation of the programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel of appropriate state agencies must be used to the extent the governor deems necessary to complete the statement. The governor shall forward the completed draft programmatic statement to the board of oil and gas conservation for hearing pursuant to the provisions

of the Montana Administrative Procedure Act, Title 2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the statement to the board for adoption and use in the issuance of permits to drill for oil and gas.

(4) Agencies of the state are exempt from the provisions of parts 1 through 3 of this chapter when undertaking actions that involve the issuance of a lease, permit, license, easement, certificate, or other approval, entitlement for use, or permission to act, except that an agency may, in its discretion, on a case-by-case basis, find that an action or a combination of actions constitutes a major action significantly affecting the quality of the human environment as specified in subsection (1)(b)(iii). In order to make this finding, the agency shall issue a declaratory ruling under Title 2, chapter 4, part 5, of the Montana Administrative Procedure Act. If an agency makes this finding, parts 1 through 3 of this chapter are applicable to the action or combination of actions."

Section 2. Section 2-4-501, MCA, is amended to read:

"**2-4-501. Declaratory rulings by agencies.** (1) Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency.

(2) To make a finding under 75-1-201(4), an agency shall issue a declaratory ruling.

(3) A copy of a declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or, in the case of subsection (1), the refusal to issue such a ruling ~~shall--be~~ is subject to judicial review in the same manner as decisions or orders in contested cases."

-End-

CHAIRMAN--TOM KEATING
SECRETARY-HELEN MCDONALD
NORMAL SCHEDULE==> SITE: ROOM 405

COMMITTEE--(S) NATURAL RESOURCES
DAYS: M,W,F TIME: 1:00 P.M.

OFFICE--

NOTE: BILL WILL BE LISTED TWICE IF REREFERRED BACK TO THE SAME COMMITTEE

BILL		REFER DATE	LATEST DATE/ACTION ON BILL	
SB 3		01/02	03/18--(S) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
			SPONSOR: MAZUREK, JOE	TITLE-REVISE REPORTING REQUIREMENTS AND PAYMENT OF TAXES FOR METAL MINES AND RITT
SB 29		01/03	03/20--(S) CHAPTER NUMBER	EFFECTIVE DATE: 03/20/89
			SPONSOR: GAGE, DELWYN	TITLE-PROVIDE RULEMAKING AUTHORITY TO BOARD OF OIL AND GAS FOR SEISMIC SHOT HOLES
SB 154		01/16	03/15--(S) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
			SPONSOR: NATHE, DENNIS	TITLE-CONFIDENTIALITY OF CERTAIN STATE LANDS LEASE INFORMATION
SB 161		01/17	03/29--(S) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
			SPONSOR: HARP, JOHN	TITLE-ADJUSTMENT OF TIMBER PURCHASER'S NONPERFORMANCE BOND TO ACTUAL COST
SB 201		01/21	04/18--(S) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
			SPONSOR: KEATING, TOM	TITLE-EXTENDING THE BOARD OF OIL AND GAS CONSERVATION'S EXEMPTION FROM MEPA
SB 211		01/21	02/15--(S) 2ND READ INDEFINITE POSTPONED	
			SPONSOR: PINSONEAULT, DICK	TITLE-ALLOW ZONING AND PLANNING RESTRICTIONS ON OPENCUT MINING
SB 223		01/25	03/15--(H) TABLED IN COMMITTEE	(H) NATURAL RESOURCES
			SPONSOR: KEATING, TOM	TITLE-REDEFINING THE MAJOR FACILITY SITING ACT DEFINITION OF UTILITY
SB 224		01/25	02/14--(S) ADVERSE COM RPT ADOPTED	(S) NATURAL RESOURCES
			SPONSOR: KEATING, TOM	TITLE-REVISING COAL TAX ALLOCATIONS; DEPOSITING IN GENERAL FUND
SB 225		01/25	02/14--(S) ADVERSE COM RPT ADOPTED	(S) NATURAL RESOURCES
			SPONSOR: KEATING, TOM	TITLE-ELIMINATE RIT INTEREST INCOME ALLOCATION TO RENEWABLE RESOURCE DEVELOPMENT
SB 226	R	01/25	04/28--(H) SIGNED BY SPEAKER	
			SPONSOR: HIMSL, MATT	TITLE-VALUE CABIN SITES ON STATE LANDS AT 1.5% OF VALUE SET BY COUNTY APPRAISER
SB 238		01/25	02/17--(S) ADVERSE COM RPT ADOPTED	(S) NATURAL RESOURCES
			SPONSOR: KEATING, TOM	TITLE-SUSPENDING POWERS OF COAL BOARD; ELIMINATING LOCAL IMPACT ALLOCATION
SB 243		01/26	03/18--(S) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
			SPONSOR: KEATING, TOM	TITLE-DELETE REQUIREMENT THAT DOR PROVIDE FORM FOR ENERGY-CONSERVING EXPENSE
SB 295		01/31	03/14--(H) TABLED IN COMMITTEE	(H) NATURAL RESOURCES
			SPONSOR: HAGER, TOM	TITLE-LIMIT LIABILITY IN HAZARDOUS WASTE SPILL CLEAN-UPS
SB 321	R	02/02	03/30--(S) CHAPTER NUMBER	EFFECTIVE DATE: 03/30/89
			SPONSOR: BECK, TOM	TITLE-GENERALLY REVISE HAZ WASTE ACT, INCLUDING UNDERGROUND TANKS AND RELATED FEES
SB 327		02/02	03/15--(H) TABLED IN COMMITTEE	(H) NATURAL RESOURCES
			SPONSOR: KEATING, TOM	TITLE-EXEMPT CERTAIN AGENCY ACTIONS FROM MEPA EXCEPT UNDER CERTAIN CONDITIONS
SB 371		02/08	03/30--(S) CHAPTER NUMBER	EFFECTIVE DATE: 03/30/89
			SPONSOR: HAGER, TOM	TITLE-GENERALLY REVISING THE MONTANA HAZARDOUS WASTE ACT
SB 435		02/15	04/24--TABLED IN COMMITTEE	
			SPONSOR: TVEIT, LARRY	TITLE-CREATE OIL AND GAS OWNERS LIEN
SJ 4		01/17	04/24--TABLED IN COMMITTEE	
			SPONSOR: RAPP-SVRCEK, PAUL	TITLE-URGING PARITY LEVELS IN THE PRICE OF RAW MATERIALS
SJ 19		03/27	04/28--(H) SIGNED BY SPEAKER	

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Senator Thomas F. Keating, Chairman on February 10, 1989, at 1:00 p.m. in Room 405 of the State Capitol

ROLL CALL

Members Present: Senators: Thomas Keating, Larry Tveit. Fred Van Valkenburg, Loren Jenkins, Darryl Meyer, Lawrence Stimatz, Pete Story, Bill Yellowtail, Elmer Severson, Cecil Weeding, Dorothy Eck, and Jerry Noble.

Members Excused: None

Members Absent: None

Staff Present: Gail Kuntz and Helen McDonald

HEARING ON SB 327

Presentation and Opening Statement by Sponsor: Tom Keating, Senate District #44, Billings SB 327 sponsored this bill dealing with the Montana Environmental Policy Act. This act controls the effect of MEPA on the permitting processes of state government. The way the law has been interpreted is that actions of state government are major actions unless deemed minor actions by the department or the agency. This bill reverses that attitude by stating that all of the permitting actions of government are minor actions. On a case-by-case basis, the department can find that an action or a combination of actions constitute a major action significantly affecting the quality of the human environment and require a full environmental impact statement. This process would then be reviewed through the Montana Administrative Procedures Act.

In the past, a department issuing a permit had a tendency to avoid making a decision if it thought their decision would be challenged. They didn't really want to make a decision on a major action because then they would have to go through the whole environmental impact process, which discourages the industry from undertaking the project they were working on. But at

the same time, the agency doesn't want to make the determination that something would be a minor action and then be challenged in the district court. Now the plaintiff that appeals this decision in the court can state this would be a major action, file a complaint with a few phrases saying why they think it would be a major action, and then the department as the defendant has to prove that the action would not be a major action and that it does not need a full environmental impact statement. The proof and the evidence would be the burden of the defendant rather than the plaintiff, which is just the opposite of our judicial system. When someone is charged with a crime and becomes a defendant the burden is on the plaintiff and the party is innocent until found guilty. In the present MEPA process, the complainer or the appellate to the minor action decision merely has to make a statement that the action is a major action. The state staff then has to gather all of its resources and spend time gathering data and evidence to prove in court that it is not a major action.

If this bill is adopted, there would still be the challenge available in the district court. The burden of proof would be on the plaintiff and the department would not have to expend funds in order to prove the validity of its original decision.

One case of the present problems was the permitting of the CENEX well up on the North Fork. The department spent 10 months preparing a preliminary environmental review and determined that it was not a major action. There was a three-page complaint filed in district court and it took the judge three years to determine that the department was in error and it should have been a major action. That kind of activity puts a real damper on all industry. The department feels it is going to have to pay a lot of expenses unnecessarily and then have a district judge who has no expertise and no training in the permitting activities make the decision of what an operator will have to go through to get the permit.

Senator Keating noted that when the Department of Agriculture was faced with the endrin problem, it said that use of endrin was a major action and prepared a full environmental impact statement. The department determined that endrin was a killer, was toxic and very dangerous and as a consequence endrin was banned in the state of Montana. The department with their own experts made a valid decision, which indicates that Montana has experts on its boards and staffs to make

proper decisions on whether something should be a major or minor action. Thus, Montana should avoid as much as possible turning these kinds of decisions over to the district courts.

Senator Keating summarized by state this bill would reverse the present situation somewhat while protecting the environment, protecting the public's health, and protecting the state. The departments and staff are well qualified and the boards and commissions are experts in their fields. They can make proper decisions based on the data they receive.

This bill would also lessen the potential for challenges in the court and lessen the cost. Finally, this bill would be an invitation to more activity and development.

List of Testifying Proponents and What Group they Represent:

Jack Salmond, Western Environmental Trade Association
Doug Abelin, Montana Oil and Gas Association
Janelle Fallon, Montana Petroleum Association
James Mockler, Montana Coal Council
Don Allen, Montana Wood Products

List of Testifying Opponents and What Group They Represent:

Thomas M. France, Montana Wildlife Federation
Bob Dozier, Northern Plains Resource Center
Kim Wilson, Montana Chapter Sierra Club
Jim Murry, Montana State AFL-CIO
Joe Gutkoski, Gallatin Wildlife Assn.
Richard Parks, Northern Plains Resource Council
Janet Ellis, Aububon Society
Gene Federson, Mont. State Construction & Building Trades
Jeff Renz, Montana Environmental Information Center

Testimony:

Jack Salmond, Western Environmental Trade Association, submitted written testimony. (Exhibit #2)

Doug Abelin, Montana of Oil and Gas Association, stated the intent of this bill is good and deserves serious consideration.

Janelle Fallon, Montana Petroleum Association, stated that she was not going to offer a whole bunch of horror stores of delays or unnecessary costs that are heaped on projects in the state. This bill helps separate major and minor to the extent that it should improve the state's ability to defend against the challenging

action and is highly worthy of the committee's consideration.

James E. Mockler, Executive Director of the Montana Coal Council, stated that this bill is a major policy decision as far as the legislature goes. With the policy now, a $.25 stamp can virtually cost an industry a million dollars and a year's time because the burden of proof would be on them. The industries need to have an EIS every time they want to expand in a new area. This is not really meaningful to any member of the public and has done nothing except cause the industry a lot of money and time. Environmental impact statements are costly and time consuming, and the only purpose they serve is to discourage someone from getting into mining. A major action, such as a new mine, should have an EIS but on relatively minor decisions an EIS should not be necessary. The departments in state government are frankly afraid to do anything else. Then the department has to go through a lengthy process having to prove that it made the proper decision before industry can proceed. It is time to leave those decisions to the departments and those that wish to appeal a department's decision should and spend their own time and effort.

Don Allen, Montana Wood Products, stated the expenses should be paid by those who challenge actions. To make it easier for decisions to be made by the departments in cases which are not major actions, an EIS should automatically not be required. This bill would simply help make that possible and also shift some of the burden to those that want to delay actions just for the sake of delay.

Thomas France, attorney with The National Wildlife Federation, submitted written testimony. (Exhibit #3)

Jeff Renz, MEIC, stated that environmental policy acts just don't exist for the enjoyment of people like the Montana Environmental Information Center. About five years ago a survey was conducted of state environmental policies acts. Six states extend their environmental policies acts to acts of local government. Montana is not one of them. Most of the state apply their environmental policy acts to ministerial actions. Nearly all the states apply their environmental policy acts to any kind of state permit. Montana requires essentially a pure state permit. Of 24 environmental policy acts across the country in 1984, Montana was one of the least affected by its law.

Janet Ellis, Montana Audubon Society, stated that SB 327

assumed that private industry would be exempt from MEPA unless an agency at its discretion, on a case-by-case, basis decides otherwise. Giving agencies discretion in enforcing MEPA is not a good idea. MEPA will be used more or less depending upon the governor in office. By making compliance with MEPA discretionary, SB 327 also discourages state agencies from doing any kind of environmental review of private projects.

Richard Parks, Northern Plains Resource Council, stated the existence of MEPA as it stands guarantees that industries will be held responsible.

Gene Federson, Montana State Building and Construction and Building Trades Council, claimed that this law was a good law for industry, the environment and the workers.

Jim Murry, Montana State AFL-CIO, submitted written testimony. (Exhibit 6)

Kim Wilson, Sierra Club. (Exhibit #5)

Tony Schooner, Montana Wildlife Association, stated that last year he was appointed to the governor's noxious weed board and money was dispersed all over the state primarily to spray noxious weeds on grasslands and farmlands. The board voted yesterday to apply for an environmental statement. When spraying farmland and grasslands it didn't seem to be too much of a problem but now subdivisions and urban areas are being sprayed. To do away with our environmental laws would be a license for a multimillion dollar lawsuit.

Stan Bradshaw, Trout Unlimited, was employed at a state agency that was involved in at least two lawsuits. The burden of proof was clearly on the plaintiff and a major part of the agency's effort was to make sure the plaintiff carried out or failed to meet that burden. This action was no different than other civil suits. Mr. Bradshaw then stated that an EIS is not triggered when an action is a major action. An EIS is triggered when there would be a major action that significantly affects the quality of the human environment. If significant effect is not shown, there is no EIS. The process regarding the discretionary decision under this bill involves a declaratory ruling under the administrative procedures act.

Jim Jensen, MEIC, stated stated if this bill passes, the best thing to do would be to repeal MEPA.

Questions From Committee Members: Senator VanValkenburg

stated that at one time he was foolish enough to think that issuing a liquor license at the edge of a wilderness area constituted major state action. He ended up in front of Judge Bennett on that issue who pretty well laughed him out of court. The judge was very kind about it but he thought it wasn't a major state action and if he said it was it would probably bring an end to the MEPA. Senator Keating's comment that the burden of proof is on state agencies to demonstrate that something is not major action wasn't borne out in his experience.

Senator Keating stated that in the case on the North Fork it appeared that the burden of proof was on the Department of State Lands rather than on the complainant. He hears from people in the industry who are seeking the permits that pressure is there and that dampens the desire to function in the state.

Senator Van Valkenburg wondered if the governor has a position on this bill.

Senator Keating answered that he didn't know whether the governor knows about this bill. He has not discussed it with him. This bill was his idea and has been working on it for a year.

Senator Weeding noted that that 17,000 permits have been applied for and 15,000 granted. Could you relate some of horror stories that Janelle Fallon mentioned?

Doug Abelin, Montana Oil and Gas Association, answered that he did not know of horror stories, but felt that doing business was becoming more complex.

Senator Yellowtail said he was astonished with Mr. Mockler's statement that there was one purpose only for MEPA, and that purpose is to consume time and money and cause delay.

Senator Keating answered that there is a valid reason for MEPA, it is to protect the natural and human environment of this state. All that the proponents of this measure are perceiving would be the way it is now, the EIS works as a damper against investment and productivity in the state. The protection is still there throughout the law and with the department staff and boards. But the window of opportunity is there for people not to be challenged frivolously from time to time.

Senator Yellowtail said he thought that Ms. Ellis stated

that twice in seventeen years there have been challenges out of 2,632 environmental assessments.

Senator Keating replied that those numbers are nice and there are all kinds of permits out there that are very insignificant insofar as the impact on the environment. But in comparison if you'd been punched in the nose just once by somebody, you are a little bit hesitant to put yourself in the same position to get punched again. That is what is happening here. Every once in awhile out of the clear blue sky there is a frivolous lawsuit brought under MEPA that makes it worrisome for somebody who's getting ready to risk several million dollars or a few hundred thousand dollars in a development project. Doug Abelin talked about the hesitation of people in the industry saying who don't want to get into a project because of potential of that one challenge.

Senator Yellowtail wondered when Senator Keating used the words "frivolous challenge" was he referring to the two that were filed.

Senator Keating answered that one was a frivolous challenge.

Sen Yellowtail assumed that the challenge was not upheld.

Senator Keating replied it was upheld by the court and that was the frightening part. Ten months of expert data gathering by the DSL, the environmental experts, the technical experts in government, and all of that evidence was turned over to the judge. The judge ignored all the evidence and came out with a decision to deny what the DSL experts had done. The judge had no basis because he was not an environmental expert.

Senator Yellowtail asked if that case was appealed to the Supreme Court.

Senator Keating replied that it is in the Supreme Court at the present time.

Senator Jenkins wanted to know about that infamous pipe line and Mr. Federson's group got it stopped under this program.

Gene Federson answered that the pipeline was up and running. There were two cases and one was the environmental case that concerned the environment, social impact and economic impact on the workers. The judge tabled that under MEPA and that shut the line down. There was another case with the public service commission that

then came in and gave them time to send in their experts from the federal government and their own experts. After that case was over, the companies involved agreed to build an environmentally safe pipelines and the companies also agreed to to tear up the biggest share of what already was in and proceed with safe measures for the rest of the line. He understands that the pipeline is now operating.

Senator Jenkins wanted to know how did it all of a sudden become environmentally safe.

Gene Federson answered that before the judge shut the project down, it had gone through a number of rivers and streams, polluted them and basically tore up the countryside. Not only did the companies have to back and fix that stuff but in the future along the pipelines up in Augusta, they had to take certain environmental construction steps to make sure they didn't hurt the environment. The PSC is the one that said you will build a line with certain standards for public safety.

Senator Jenkins asked if the pipeline was held up for two years.

Gene Federson stated that was correct. Building pipelines is a very sophisticated and scientific thing. There are certain ways to build them and put them in the ground so that they don't disturb the water and the soil quality. There's the problem of knapweed along the pipelines out of western Montana.

Senator Jenkins stated they were safer without the holes drilled in the inside of the pipe.

Gene Federson answered "yes".

Senator Jenkins asked if the pipeline was finished and then held up.

Gene Federson answered "yes".

Senator Eck stated that Senator Keating has suggested that MEPA as written might scare out some investors. She wondered if we might attract some good investors because we do have a good environment.

Lee Strancek, Trout Unlimited, responded that it would be his opinion that people and companies can see the handwriting on the wall and the way to do business in the future would be in an environmentally sound

fashion. The companies who bear some of up front costs are the ones that will succeed.

Senator Jenkins wanted to know how much this law has increased our business or population in the last five years.

Lee Strancek answered he wasn't sure if MEPA has increased the population and wondered what Montana is interested in is the well being of the current population. He asserted Montana is interested in the economic status of people who are currently holding wage earning jobs now in the state.

Senator Jenkins said Montana's population has been dropping and it might lose one congressman. Montana has lost a major portion of it's working population and if MEPA is so good for business, where is it showing up?

Lee Strancek answered that it is hard to see what would have happened if, for example, Montana hadn't had MEPA. The cost of environmental protection should be an accepted part of doing business because if it is not, then that cost of doing business on somebody else. For example, who will pay for the toxic situation in Livingston? The company that did it isn't going to bear the cost but someone else is so there is a question of cost transfer. The general population is better off if a company that comes in is committed to sound environmental policies.

Senator Eck stated that in Bozeman the last 4 or 5 years almost every single company that came in did so because of Montana's environment and living conditions.

Doug Abelin stated in four years a thousand people in the Cut Bank area have left. He has 2 of over 200 houses for sale. He is here lobbying for the oil and gas industry not only to keep his business alive but to help keep that portion of the industry alive. Seventy percent of the RIT money is oil-based money. This state doesn't want to lose the industry's benefits but does not want to condone the industry. He would not defend the industry in past years, but laws have improved on that, by support of the industry and the environment. He thinks the people that are trying to use these laws are creating adverse effects.

Senator Weeding wondered if SB 327 should pass, would it affect the way the DSL or FWP do their land evaluations and permitting?

Senator Keating answered the procedures would still be there for all of the environmental assessments and reviews, and for the environmental impact statements.

Senator Weeding wanted to know if the change would affect the federal agencies under MEPA.

Senator Keating answered that MEPA has no effect on the federal government.

Senator Weeding wanted to know if all this bill would really pertain to those actions on private lands rather than public lands.

Senator Keating stated this bill affects all lands in Montana.

Senator Weeding thought he heard in the other debate that extending the oil and gas exemption from MEPA really had no effect on how state lands does their leasing. They still have a check list they go through.

Senator Keating answered that all this does is lessen the potential for challenge in the district court.

Senator Van Valkenburg asked what would happen if an agency's determination that something was not a major state action under this bill was overturned by the district court. Does that mean the district judge decides that it's a major state action?

Senator Keating said it doesn't mean that at all.

Closing by Sponsor: Senator Keating stated that if one considers the proponents and opponents, the backgrounds, the endeavors and the industry of those two categories, he thinks one will see that there is an extreme difference of opinion in what's being done and what is being attempted. There are those who take risks with capital investment to conduct their business in the state of Montana for the benefit of the state's economy. People of Montana say that MEPA weighs heavily on their decisions to invest. On the other side, you hear those who are not engaged in some of these extractive industries that are impacted by MEPA. It is interesting that the union leadership appeared here in opposition to this bill when its obvious from the statistics in the late 70's, when 40% of the working people in the state belonged to the union, and now only 10% belong to union. Moreover, the working force has dropped by some 20 or 30 thousand jobs in this state.

Senator Keating thinks it should be obvious that the rules and regulation promulgated in the 70's have impacted industrial and exploratory investment and have driven investment away to the extent that we lack jobs, productivity, and a good sound economy. Have our regulations been too stringent? Are we driving away capitol investment and opportunity? If the legislature adopts this measure it will still protect the environment but you will encourage investment and a better economy.

Senator Tveit closed the hearing on SB 327.

EXECUTIVE ACTION

There are no bills on Monday, February 13, but action will occur.

Senator Keating noted that SB 211 is Senator's Pinsoneault's bill which was voted on and with Senator Eck's vote it was a tie. This matter will be discussed again on Monday.

SB223 SB 223 is the Major Facilities Siting Act bill. In the last meeting it was amended to define a "utility". (Exhibit 7)

Larry Tveit made a motion that SB 223 do pass as amended.

Senator Van Valkenburg discussed one other amendment before action Senator Tveit's motion. On page 8, line 17, he understands the bill is trying to take away the requirement of proving need if the facility proposed is an entity other than utility. Senator Eck asked a question about how letting private enterprise act to avoid the proof of need when the entity is substantially funded from federal funds (for example, for a synthetic fuels or shale oil facility).

Senator Keating answered that he had language prepared as an amendment but the department of Natural Resources and Conservation stated it was not workable.

Van Jamison stated that the department has to know what is meant by the idea of subsidizing. The biggest concern the department has with subsidizing is not subsidies in the absolute sense but the reliability by which that subsidy is provided. The difficulty the department would see for industry is that somebody might build with the expectation of a subsidy and then find that the subsidy is withdrawn. The difficulty would be having to write rules to implement something to distinguish between those people who receive subsidizes

ROLL CALL

NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1989 Date 2-10-89

NAME	PRESENT	ABSENT	EXCUSED
Chairman Tom Keating	✓		
Vice-Chairman Larry Tveit	✓		
Senator Fred VanValkenburg	✓		
Senator Loren Jenkins	✓		
Senator Darryl Meyer	✓		
Senator Lawrence Stimatz	✓		
Senator Pete Story	✓		
Senator Bill Yellowtail	✓		
Senator Elmer Severson	✓		
Senator Cecil Weeding	✓		
Senator Dorothy Eck	✓		
Senator Jerry Noble	✓		

Each day attach to minutes.

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE 2-10-89

BILL NO. SB 327

NORTHERN PLAINS RESOURCE COUNCIL

Field Office
Box 858
Helena, MT 59624
(406) 443-4965

Main Office
419 Stapleton Building
Billings, MT 59101
(406) 248-1154

Field Office
Box 886
Glendive, MT 59330
(406) 365-2525

Montana is proud of it's clean environment.When the rest of the country thinks of our great state, they think of vast open skies. They think clean running streams. They envision Montana as unspoiled scenic beauty. One of the last places in this country where you can find wild rivers. A place where the native wildlife hasn't been poisened out. Truely a paridise unspoiled. As our ads once read "The last of the big time splendors.

All of this didn't happen by chance. When Montana started to get heavy into developing it's natural resources it put into place laws to protect it's environment. Montana Environmental Policy Act is one of those laws. Perhaps the most signifigant one. A model for others to follow. We have become a generation of planners. MEPA makes us look at not only the present value of our resources, but what impact they will have on future generations. I once read somewhere need is difficult to prove.Food, water and warmth are needs. Everything else are wants.We need to balance those wants against their environmental impacts. Poor planning can cause problems that will stay us for many generations to come. Quality of life should be the criteria for all planning. Greed must be balanced with need. MEPA was created for that very reason. Future generation will thank us for our farsightedness. Please preserve this act in it's present form. Defeat this bill for the future of Montana.

oppose SB 327

Bob Dozier - 2/10/89

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 2-10-89
BILL NO. SB 327

TESTIMONY BEFORE THE
SENATE NATURAL RESOURCES COMMITTEE
FEBRUARY 10, 1989

SB 327

Mr. Chairman, Members of the Committee, my name is Jack Salmond and I am here today to represent the Western Environmental Trade Association or WETA in supporting SB 327.

As you are aware, WETA represents a broad spectrum of interests, including agriculture, labor, recreation, business and industry--including our state's resource industries. Our primary goal is to promote jobs and economic development opportunities for the state of Montana while fully recognizing, and encouraging, the reasonable protection of our physical environment.

Our association has long been an opponent of unncessary red tape and regulation that discourages industries from doing business in Montana. We believe that when a project is only in its exploration stages, or when development involves a small operation with a minimal impact on the environment, preparation of a full-blown environmental impact statement is not only unnecessary, but as a result of the expense and lengthy delay, could be driving away the potential for jobs and economic opportunities in a state that is in desperate need of both.

As I mentioned earlier, WETA believes our environment should be protected in a reasonable manner. In the instance of a small timber harvest, or a small mining operation we feel an environmental review that takes into account the appropriate reclamation considerations would adequately provide that protection.

In sum, we encourage efforts to improve existing laws in order to create a better business climate for Montana. We trust this committee will consider the potential economic benefit of SB 327 and recommend that it be passed.

Thank you again, Mr. Chairman and members of the Committee for the opportunity to offer my comments today.

NATIONAL WILDLIFE FEDERATION

NORTHERN ROCKIES NATURAL RESOURCE CENTER (406) 721-6705
240 N. Higgins, Missoula, Montana 59802

SENATE NATURAL RESOURCES
EXH'BIT NO. 3
DATE 2-10-89
BILL NO. 327

TESTIMONY ON BEHALF OF THE MONTANA WILDLIFE FEDERATION,

AND THE NATIONAL WILDLIFE FEDERATION IN OPPOSITION TO

SENATE BILL NUMBER 327

Montana State Capitol
Helena, Montana
February 10, 1989

Thomas M. France, Esq.
National Wildlife Federation
240 N. Higgins
Missoula, MT 59802
(406) 721-6705

Members of the committee, my name is Thomas M. France, and I am here today on behalf of the Montana Wildlife Federation and the National Wildlife Federation to speak out in strong opposition to Senate Bill 327. I am an attorney in Missoula with the National Wildlife Federation. I also serve on the Montana Environmental Quality Council and am an adjunct professor of law at the University of Montana Law School, although I am in no way speaking for either the EQC or the Law School today.

The proposed legislation before you would grant to all of Montana's state agencies the discretion to exempt projects and activities proposed by private companies and individuals from the provisions of the Montana Environmental Policy Act, MCA 75-1-101 et seq. As most of you know, MEPA requires state agencies to analyze proposals by both the private and governmental sectors that may have a significant impact on Montana's environment. The law directs that this analytical process should take place through the preparation of an environmental impact statement which examines the environmental impacts of the proposal and identifies alternatives which might reduce or eliminate such impacts. The EIS is a public document and available for review by other agencies and companies and Montana's citizens. The fundamental purpose of the environmental review required by MEPA is to ensure that state decision makers have before them the best possible information prior to making decisions that may affect Montana's environment. SB 327 would effectively eliminate this process of review even for those projects with potentially the most damaging impacts to our air, our water and our landscape.

2/10/89

te that the bill before you does not contain
ana Environmental Policy Act but instead only
rt two, which concerns the actual preparation
part one that the purposes and policies of
d only by reviewing these provisions that
he reasons why the 1971 legislature enacted
at state agencies carefully consider the en-
pproving any project. Part one of MEPA un-
that it is the continuing responsibility of
to use all practical means to fulfill the
each generation as trustee of the environment
ations. MCA 75-1-103(2)(a). MEPA states
y of state government to assure for all
althful, productive and aesthetically and
surroundings. MCA 75-1-103(2)(b). The law
ound impact of man's activities on the inter-
ponents of the natural environment," and fur-
"critical importance of restoring and
ental quality to the overall welfare and de-
MCA 75-1-103(1). To enact the legislation
to defeat these very purposes and to make a
ies that were embodied in the 1971 legisla-
een carried forward by each successive legis-
was first passed.
ced with many sad examples of what happens
is not considered as private activities are
today has the largest Superfund site in the

resulted from min-
te in the early
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recognizing the
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and care gone into
n exists at
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n up problems that

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the projects
since MEPA was
were and are con-
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mines in Montana.
her laws such as
ip Mine Act and
it required agen-
and that made
people for good en-

nergy development
ples across the
no way halted

BEST COPY
AVAILABLE

through the MEPA process. I have with me today the EIS prepared by the Department of State Lands and the U.S. Forest Service on the Stillwater development in the Beartooths. As a result of this EIS, the project went forward but only after the agencies requested certain elements of mine be redesigned and identified 15 separate mitigation measures. One can look to the many environmental impacts statements prepared on gold mining in Montana over the past decade or to the improved water quality in the Clark Fork River which resulted from a MEPA review of the Champion Mill's discharge permit for other examples where MEPA has worked, and worked well on behalf of both Montana's people and its environment.

I am certain that the proponents of this legislation will say that such reviews can still take place if this bill is enacted, since it allows state agencies initiate an EIS on private projects at their discreation . But rather than making environmental planning an integral part of agency decisionmaking, as it now is, this legislation suggests that environmental concerns can be discarded for capricious reasons and that the purposes so strongly set forward in the introduction to the Montana Environmental Policy Act can be ignored where convenience so dictates. This is the wrong approach for Montana in the 1990's.

I have with me copies today of all of the Supreme Court cases that have interpreted the Montana Environmental Policy Act. There are a total of four cases. The fact that there are only four cases in 18 years of history suggests that MEPA's implementation has not been controversial, as neither private corpora-

tions nor public citizens have had cause to resort to the state courts. At the same time, the examples I have mentioned where good environmental planning has led to better projects are just that: examples, which could be supplemented by many other instances where state agencies, complying with the Montana Environmental Policy Act, have permitted projects to go forward, but only after careful review by both the agencies and the public.

In conclusion, there is no basis for amending the Montana Environmental Policy Act to set up the discretion embodied in Senate Bill 327. The Act has been implemented and implemented well, and it has achieved a measure of its purpose in forcing better decisionmaking by Montana's state agencies. The enactment of Senate Bill 327 would create controversy and confusion where none exists today and call in to question the fundamental responsibility of our state agencies to protect Montana's environment when they authorize private activities and projects.

Thank you for your consideration of this testimony.

EXH'BIT NO. 7
DATE 2-10-89
BILL NO. SB 327

THE MONTANA ENVIRONMENTAL POLICY ACT COMPARED

I.	SIX STATES EXTEND THEIR SEPA TO LOCAL GOVT.	MONTANA DOES NOT.
II.	MANY STATES APPLY THEIR SEPA TO MINISTERIAL ACTIONS.	MONTANA DOES NOT.
III.	NEARLY ALL STATES APPLY THEIR SEPA TO STATE PERMITTING.	MONTANA REQUIRES "PURE" STATE ACTION.
IV.	MOST STATES APPLY A LOW THRESHOLD TO "SIGNIFICANT IMPACT."	MONTANA DOES NOT.
V.	SOME STATES EXPRESSLY REQUIRE DISCUSSION OF MITIGATION MEASURES.	MONTANA DOES NOT.
VI.	ALL STATES REQUIRE AGENCIES TO DISCUSS REASONABLE ALTERNATIVES TO A PROPOSED ACTION.	MONTANA DOES NOT.
VII.	MANY STATES REQUIRE MITIGATION OF ENVIRONMENTAL IMPACTS PURSUANT TO THEIR SEPA.	MONTANA DOES NOT.

VIII. OF THE 24 STATE ENVIRONMENTAL POLICY ACTS ON THE BOOKS IN 1984, MONTANA'S IS ONE OF THE LEAST EFFECTIVE.

IX. CALIFORNIA'S, NEW YORK'S, MINNESOTA'S, MASSACHUSSETTS', AND WASHINGTON'S ENVIRONMENTAL POLICY ACTS ARE THE TOUGHEST IN THE NATION. WHICH STATE IS "ANTI-BUSINESS?"

EXH'BIT NO. 5
DATE 2-10-89
BILL NO. SB 327

MONTANA CHAPTER SIERRA CLUB

415 NORTH 17TH AVENUE • BOZEMAN, MONTANA 59715 • (406) 587-9782

Hearing: February 8, 1989
SIERRA CLUB IN OPPOSITION TO SENATE BILL 327
KIM WILSON, LOBBYIST

The Sierra Club opposes SB 327 as yet another thinly veiled attempt to scrap one of Montana's premier environmental laws, the Montana Environmental Policy Act (MEPA).

MEPA was passed in 1971 soon after the passage of the National Environmental Policy Act (NEPA), and immediately prior to the 1972 Montana Constitutional Convention. MEPA, like NEPA and subsequent Montana Constitutional provisions, established a public policy of protecting the natural environment. Both the purpose and policy of the original act make clear the legislature's intention to commit the state to a policy of preserving and protecting its natural resources. To that end, the Act required for every major action of state government "significantly affecting the human environment" a detailed statement on that action's environmental impact and alternatives to the action.

SB 327, as it is drafted, turns the original intent and clear direction of the statute on its head. The new paragraph 4 creates an exception that swallows the rule. It removes that mandatory review of all major actions by exempting **any** action requiring **any** state review. The implication is that that existing review process will address environmental concerns. Clearly, however, that is not the case when the exemption applies, as it does here, to matters as diverse as leases

or easements. If there is any review of environment matters through these various actions it is certainly not uniform, as was intended in the original act.

While the bill gives an agency discretion to require MEPA compliance, the process required for it to do so -- a declaratory ruling -- is cumbersome and time consuming. This will, to put it mildly, put a chill on agency initiative in this area. For all practical purposes, MEPA will never be required.

In short, the proposed change eviscerates MEPA. We do not believe Montanans will tolerate that. Montanans have proven time and again their interest in maintaining a clean and healthful environment in the state. It is a Constitutional right, and MEPA is one of the laws that ensures that right. The beauty of our natural resources is one of our greatest attractions and certainly one of our greatest assets. The Legislature has an interest in ensuring that those amenities are protected. This bill does the opposite. If the proponents of this bill wish to overturn MEPA, they should be honest and forthright about it and tell the people of Montana that they propose to do just that. The Montana Chapter of The Sierra Club strongly urges that you vote "do not pass" on SB 327.

MONTANA STATE AFL-CIO
APRIL 29 1956

JAMES W. MURRY
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 2-10-89
BILL NO. SB 327

Testimony of Jim Murry before the Senate Natural Resources Committee on Senate Bill 327, February 10, 1989

Mr. Chairman and members of the committee, for the record, I am Jim Murry, executive secretary of the Montana State AFL-CIO. We are here today in opposition to Senate Bill 327 which would make discretionary state agency actions under the montana environmental policy act.

The position of the Montana State AFL-CIO on issues of balancing environmental protection and economic development is long-standing. Delegates to our convention have consistently expressed their view that strong, sound environmental protection laws lead to proper development of our state's natural resources and to more and better jobs.

MEPA is one of the laws which helps us to balance our environmental concerns and economic growth. It serves to look at the environmental consequences of our actions. Certainly, a balanced approach by the agencies of state government will benefit not only us but generations to come.

Jobs and environmental protection can and should go hand-in-hand. We feel that this legislation is unnecessary and could prove harmful to our state in the long run.

We urge you to defeat Senate Bill 327. Thank you.

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AMERICA WORKS BEST WHEN WE SAY, UNION YES ✓

VISITOR'S REGISTER

_____ SUBCOMMITTEE

AGENCY(S) _____ DATE 2-10-89 143

DEPARTMENT _____ SB-324

NAME	REPRESENTING	SUPPORT	OPPOSE
Doug Abelin	Montana Oil & Gas Assoc	✓	
John Salmond	WETA	✓	
Tom Franks	MT. Wat Wildlife Federation		✓
Kim Wilson	Sierra Club		✓
Sherm Janke	Sierra Club		✓
Jeffrey Renz	MEIC		✓
Richard Parks	EPEC		✓
Bob Dozier	N.P.R.C		✓
[illegible]	MEIC, Self		✓
Dan Heinz	Self		✓
Don Allen	Wildlife Montana Inc + Unlimited		✓
Brenda Allen			✓
Chantelle Fallon	MT Petroleum	—	~~✓~~
Jim Jensen	MEIC		
Stan Bradshaw	Trust Unlimited		✓
Mary Schoonen	M.W.F.		✓
Cedron Jones	—		✓
Michelle Rodey-Hutchins	Self		✓
Kevin Shore	Self		✓
Jim Murry	Mont. State to AFL-CIO		✓
Valerie Larson	MT Farm Bureau	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT.
IF YOU HAVE WRITTEN COMMENTS, PLEASE GIVE A COPY TO THE SECRETARY.

FORM CS-33A
Rev. 1985

DATE 2-10-89 2 of 3

COMMITTEE ON NATURAL RESOURCES

VISITORS' REGISTER

SB-327

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Eugene Fenske	Mt St Blg Trades	3		X
Teresa ERICKSON	NPRC	327		X
Ill Erickson	myself	327		X
Janet Ellis	Audubon	327		X
Marguerite Adams	Audubon Council	327		X
Don R. Hanks	Audubon	327		X
Jack Spece	self	327		X
Joe Gutkoski	Pres. Gallatin Wildlife Assoc	327		X
Kerry Michaevich	TU	327		X
George HOLTON	Myself	327		X
ANN PEWUSKE	MAPP	327		X
Jim Mockler	Mt. Coal Council	327	✓	
Monte Mekusk	NPRC	327		X
Bill Bowman	NPRC - SPP			X
Joe Stanczak	Trout Unlimited	327		X
Stan Cook	EXXON	327	X	
Mary A Conaky	Mt. Mining Assn.	327	X	
John North	Dept. of State Lands	327		
Marc Passmann	Self	327		X
Bill Rogers	Rancher.	327	X	
Louise Bruce	N.P.R.C.	327		✓
Grant Quist	21 Jefferson Helena Mt.	327		✓
Bev Hultgren	Audubon	327		✓
Suzanne Hanlon	self Helena	327		✓
DENNIS KAVANAGH	Fishing Outfitters	327		✓
Maynard Schoening	Citizen	327		X

(Please leave prepared statement with Secretary)

DATE 2-10-89

COMMITTEE ON NATURAL RESOURCES

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Jon Ahl	MWPRA	SB 327	✓	
Dianne Kuntz	Self	SB 327		✓
Carrie Hasbrouck	Self	"		✓
Mary Lou Fox	private citizen	SB 327		✓
Kevin Armstrong	self	SB 327		✓
Chris Kaufmann	MEIC	"		✓
Harold Hoe	CENEX	"	✓	

(Please leave prepared statement with Secretary)

there was an inspection. Is the employer given time to correct an error of that sort or would he be fined under this legislation?

Katherine Orr stated that in the real world a lot of the DHES programs amount to issuing cautionary letters or at the extreme administrative orders to ensure persons get their act together. Filing a civil action would be a more extreme move that the department undertakes very infrequently.

Closing by Sponsor: Katherine Orr stated on behalf of Senator Hager it would be productive for the department and industry to decide what is most problematic and make some drafting changes. A fact sheet was handed out with a schedule of the federal laws and the state's proposed language. In response to Mr. Wittich's observations on page 8 that the department would give itself more authority than the federal reference, the comparison [75-10-413(3) and RCRA 3012(b)] would be noted in the schedule. Under the federal act, agencies have authorization to implement the entire discovery procedure. The department is just asking for early investigation of the situation to out if there might be a potential impact on public health.

DISPOSITION OF SB 371

Discussion: The hearing on this bill was closed.

EXECUTIVE ACTION

SB 238 Senator Keating stated that SB 238 is the coal board bill to suspend the coal board and not spend for employees and space, etc.

Senator Weeding made motion DO NOT PASS The motion passed, with Senator Keating opposing it.

Senator Keating stated SB 211 was moved to second reading by floor action.

SB 327 Senator Keating added that SB 327 is the bill that would amend the Montana Environmental Policy Act by making all permitting actions of government minor actions unless deemed major actions by the department. It allows the professionals in the various agencies to make the determinations as to major or minor actions and if challenged on their decision, there would still be due process in the district court. If the department permits something to remain a minor action, then the burden of proof would be on the appellant in the

district court and not on the defendant.

Senator Jenkins moved this bill DO PASS.

Senator Weeding stated that MEPA would be the guideline for the decision-making body to use in determining whether the action affects the environment. In the absence of MEPA, what would guide that decision-making body under this discretionary language?

Senator Keating stated that through the statutes the departments would be required to protect the environment and all the agencies and various boards would be aware of their duties and obligations in the rules and regulations. This doesn't change their procedures because they continue to make the determinations according to the rules and regulations.

Senator Eck stated that this bill discards all the work done previously. There used to be a preliminary environmental review which was a process that allows MEPA to work in a minor way but enabled the department do an environmental review. Some cases might be more difficult and need some mitigation action. They would have a hearing first where they would bring in all the parties and after that hearing, they could work out the process. This would allow them even where there is a possibility of severe problems take care of environmental impacts through mitigation and to not go through a full MEPA review. The industry, the departments, and environmentalists have worked to develop rules. This bill would wipe all that out, which means that if you don't like the agency decision, you have to go to court.

Senator Keating stated the protection of the environment and the rules and procedures would still be there and the obligations of the agencies would remain in place. A number of industries that have been in operation under the law for the past eight years have found it difficult to undertake various projects. It has been difficult to start projects as indicated in the letters handed out. (Exhibit #3) People in various industries have been reluctant to start a project if after they put their seed money into it, they are impacted with a delay and a challenge that they are not prepared to meet. The bill would still leave controls and protect the environment. But the bill offers an opportunity for more industries to look at Montana as a place to do business. The legislature should do everything we can to encourage outside and in-state investment in Montana to build our economy.

Senator Eck contends that this bill doesn't ease the law but would mean a higher probability of environmental

confrontation than we have now. Montana has worked in the past to develop a system to avoid problems with government.

Senator Keating stated that apparently various industries disagreed because they came in support of this measure stating it would be easier for them to function and would be more apt to help improve the economy.

A motion was made for a DO PASS on SB 327. Roll call vote resulted in endorsement of the DO PASS motion for SB 327 (Exhibit #2).

ADJOURNMENT

Adjournment At: 1:50 pm

THOMAS F. KEATING, Chairman

TFK/hmc

senmin.215

ROLL CALL

NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1989 Date 2-15-89

NAME	PRESENT	ABSENT	EXCUSED
Chairman Tom Keating	✓		
Vice-Chairman Larry Tveit	✓		
Senator Fred VanValkenburg	✓		
Senator Loren Jenkins	✓		
Senator Darryl Meyer	✓		
Senator Lawrence Stimatz	✓		
Senator Pete Story		✓	
Senator Bill Yellowtail	✓		
Senator Elmer Severson	✓		
Senator Cecil Weeding	✓		
Senator Dorothy Eck	✓		
Senator Jerry Noble	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

February 15, 1989

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration SB 327 (first reading copy -- white), respectfully report that SB 327 do pass.

DO PASS

Signed: Thomas F. Keating

Thomas F. Keating, Chairman

N.C.
2/16/89
3:20 p.m.

SCRSB327.215

CHAIRMAN--BOB RANEY
NORMAL SCHEDULE==> SITE: ROOM 317 DAYS: M,W,F TIME: 3:00 P.M.

SECRETARY-CLAUDIA MONTAGNE

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0243	2/21	3/03		CONCUR		3/04
KEATING, TOM			DELETE REQUIREMENT THAT DOR PROVIDE FORM FOR ENERGY-CONSERVING EXPENSE			
SB0261	2/21	3/13		CONCUR AS AMENDED		3/16
BISHOP, AL			EXEMPTS CERTAIN BOUNDARY LINE RELOCATIONS FROM SUBDIVISON AND PLATTING ACT			
SB0295	2/21	3/08		TABLED		
HAGER, TOM			LIMIT LIABILITY IN HAZARDOUS WASTE SPILL CLEAN-UPS			
SB0305	2/21	3/06		CONCUR AS AMENDED		3/07
JERGESON, GREG			VOLUNTARY TERMINATION OF STATE LAND LEASE UPON ENROLLMENT IN CRP			
SB0321	2/21	3/08		CONCUR		3/14
BECK, TOM			GENERALLY REVISE HAZ WASTE ACT, INCLUDING UNDERGROUND TANKS AND RELATED FEES			
SB0327	2/22	3/15		TABLED		
KEATING, TOM			EXEMPT CERTAIN AGENCY ACTIONS FROM MEPA EXCEPT UNDER CERTAIN CONDITIONS			
SB0371	2/22	3/08		CONCUR		3/13
HAGER, TOM			GENERALLY REVISING THE MONTANA HAZARDOUS WASTE ACT			
SB0385	2/22	3/08		CONCUR AS AMENDED		3/11
HARP, JOHN			GENERALLY REVISING REMEDIAL ACTION AND ENFORCEMENT FOR HAZARD WASTE RELEASES			
SB0390	2/22	3/10		CONCUR AS AMENDED		3/16
GALT, JACK			ALLOWS INTERIM PERMIT TO APPROPRIATE WATER FROM COAL MINES NEAR ROUNDUP			
SB0447	2/28	3/13		CONCUR		3/14
YELLOWTAIL JR., WILLIAM			ESTABLISHES PROCESS AND PRIORITY DATES FOR FUTURE WATER RESERVATIONS			
SB0450	2/28	3/13		CONCUR AS AMENDED		3/14
YELLOWTAIL JR., WILLIAM			CLARIFIES STATUS AND USE OF SALVAGED WATER UNDER MONTANA WATER LAW			

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairperson Bob Raney, on March 15, 1989, at 4:10 p.m.

ROLL CALL

Members Present: All present except:

Members Excused: Rep. Kadas, Rep. Moore, and Rep. Hannah

Members Absent: None

Staff Present: Claudia Montagne, Committee Secretary and Hugh Zackheim, Staff Researcher, Environmental Quality Council

Announcements/Discussion: None

HEARING ON SB 327

Presentation and Opening Statement by Sponsor:

SEN. KEATING, Senate District 44, opened on the bill which dealt with the Montana Environmental Policy Act (MEPA). He told the committee that Montana had been involved in mining, timbering, and oil and gas operations, and yet, even after that 100 years of development and exploitation, the state still had 3 million acres of designated wilderness, another 3 million acres meeting wilderness criteria, outback lands and recreation lands throughout the state. He suggested that the presence of a beautiful environment despite 100 years of resource exploitation represented a dichotomy.

SEN. KEATING continued, saying that in 1971 the Legislature decided to protect all of this, and passed the Montana Environmental Policy Act, the Major Facility Siting Act, the Air Quality Act and the Water Quality Act. As a result, he said the robust economy in the state began to slow down. He suggested that the loss of industries was due to the fact that all of a sudden it had become too costly and too difficult to do business in Montana. As a consequence, he said the state had lost 40,000 jobs in the last 10 years, as well as refineries, smelters, and sawmills.

SEN. KEATING said that part of the problem was with the Montana Environmental Policy Act because the law, as it was written, implied that all permits were major actions, unless designated by the Department of Natural Resources and Conservation (DNRC) to be a minor action. He said that if

the department deemed something to be a minor action, which would not require an environmental impact statement (EIS), a disinterested third party could challenge in district court that the action was a major action. He said the party's claim would derive from 75-1-201, in which the intent of the Legislature was that this constituted a major action. At that point, the weight and burden of evidence would rest upon the department. He suggested that placing the burden of proof upon the defendant was contrary to our system of justice.

SEN. KEATING said SB 327 would reverse that role. Under the bill, all actions would be considered minor unless the department deemed it a major action. He distributed a handout (EXHIBIT 1) which indicated that the proposed change in SB 327 would have no effect on all of the rules and regulations at the disposal of state government for making its determinations regarding what is major and minor. He said the effect of the bill would be on how the intent of the Legislature was perceived by the courts whenever there was a challenge on a minor action. SEN. KEATING said those who wished to invest here would perceive that Montana was being fair in the application of its environmental laws.

Testifying Proponents and Who They Represent:

Cal Cummings, Economic Development Director, Billings
James D. Mockler, Executive Director, Montana Coal Council
Jack Salmond, Western Environmental Trade Association (WETA)
Janelle Fallan, Executive Director, Montana Petroleum Association
Lorna Frank, Montana Farm Bureau, Women Involved in Farm Economics (WIFE), and the Water Resource Association
Kim Enkerud, Montana Stockgrowers Association
Julie Hacker, Missoula County Freeholders Association
Sue Weingartner, Montana Solid Waste Contractors
Mark Simonich, F.H. Stoltz Land and Lumber Company
Kay Foster, Billings Chamber of Commerce
Don Allen, Executive Director, Montana Wood Products Association
Colleen Ellison, Mayor, City of Columbia Falls
Carol Daily, Executive Director, Flathead Economic Development Corp.

Additional Proponent Testimony:

Doug Abelin, Montana Oil and Gas Association, EXHIBIT 3

Proponent Testimony:

CAL CUMMINGS said Montana today was facing serious problems that had been years in the making. He said some of those problems were exemplified by the problems with school equalization. He said that it came down to an ongoing

search for property and income tax revenue. The population in Montana was dwindling, and business was stagnant. He stated that Montana needed to bring back the 12 thousand or more in population that it had lost, because we were in the process of losing a United States Representative.

MR. CUMMINGS said that in his capacity as an economic development director, he was confronted constantly by prospective businesses looking at this area. He said their impression was that there was a bad business attitude in Montana. He said this bad attitude was made up of many things such as taxation, Workers Compensation, and the uncertainty in the environmental laws. It was thus difficult for a big business to come into Montana and try to budget for what was needed to build a new plant or new business here. In the case of MEPA, a decision by the department could be challenged, and he asked how a big or small industry coming would budget for that. MR. CUMMINGS said, as Senator Keating pointed out, that he was not after a major change in the environmental laws, but wanted the process to be allowed to proceed once a state agency had made a decision.

JAMES MOCKLER said he had no argument with the EIS requirement in major cases, such as a coal mine. However, he objected to the requirement for an EIS every time an operator wanted to move a drag line, or go into a relatively small new area. He noted that Western Energy, in its years of operation, had done 20 EIS's, 7,700 pages that he said no one had ever read. He said it meant cost to the company, cost to customers, and delay. He said he did not want to change the environmental laws, but asked for some flexibility. He suggested that a Preliminary Environmental Review (PER) or some other means could be used instead of a full EIS. He also said that the proposed changes would give some certainty, once the Department of State Lands had made the decision that an EIS was not needed.

JACK SALMOND said WETA represented a broad spectrum of interests including agriculture, labor, recreation, business and industry and state resource industries. The organization's primary goal was to promote jobs and economic development opportunities for the state of Montana while fully recognizing and encouraging a reasonable protection of the environment. He said the association had long been an opponent of unnecessary red tape and regulations that discouraged industries from doing business in Montana.

MR. SALMOND said WETA believed that when a project was only in its exploration stages or when development involved a small operation with a minimum impact on the environment, the preparation of an EIS was unnecessary and could drive away jobs and economic opportunities. MR. SALMOND suggested that, in the instance of a small timber harvest or a small mining operation, an environmental review that took into account the appropriate reclamation considerations would

adequately protect the environment. He said WETA encouraged efforts to improve existing laws to create a better business climate for Montana, and urged the committee to give SB 327 favorable consideration.

JANELLE FALLAN reiterated that it was very important that the burden of proof be on the challenger, rather than on the agency that would be issuing the permit.

LORNA FRANK stated that this proposed change would help the economic climate of the state, but would not drastically change the environmental intent. She said the change would make the law more responsive to the majority of the people of this state.

KIM ENKERUD stood in support of SB 327.

JULIE HACKER testified that the bill would provide an opportunity for development of resources in the state without costly litigation (EXHIBIT 2).

SUE WEINGARTNER said the bill was reasonable because only those proposals which would have a significant impact on the environment would be required to go through the time-consuming and costly procedures of an EIS. She said the safeguards to the environment would still be intact and were not at all compromised by this bill.

MARK SIMONICH said F.H. Stoltz supported the state of Montana taking the appropriate steps to protect and enhance natural resources, and believed the Montana Environmental Policy Act was intended to do this. However, he expressed concern that the trend had been to allow that act to be a vehicle to stop economic development. He said it had become a "paper tiger" that was basically eating up an agency. He said the department was unable to get out and do the work necessary because of numerous appeals and endless litigation. He gave the example of two law suits filed against the Department of State Lands concerning operations on school trust lands. He said he was worried that this trend would grow in the state. He suggested that SB 327 provided an option to let the state spend its money managing resources instead of just shuffling paper.

KAY FOSTER gave examples of two situations in Yellowstone County: a proposed chrome refinery and a barley malt plant proposed by Anheiser Busch. Both represented the potential for significant economic benefit to the county. Under current law, she said someone could claim that there could be a major environmental impact, which could delay this development. She said the proponents were not asking for easing of current environmental requirements, but rather that unnecessary delays be removed.

DON ALLEN commented that no one who enjoyed this state would wish that any of the mistakes of the past be repeated. He said the real problem with all the issues addressed at the hearing were the intentions of the few people who wanted to use the rules to prevent certain things from happening. He said he thought the changes that the bill asked for would certainly not do anything to remove the protection in the current laws. Rather, he said it would shift the burden to those who had nothing at risk. He suggested that the timber industry was a living example of what paralysis can occur by those who used the 25 cent stamp and yet had nothing at all at risk.

COLLEEN ELLISON said part of her responsibility was to protect and support jobs for her people and to produce a balanced environment. She said the bill made sense to her because it allowed people to do business expediently, profitably and sensibly, and gave a balance both to jobs and the environment. She said that as a mayor for the last seven years, she had witnessed the increased responsibilities to the environment. She said that the state and communities needed jobs, markets, and the ability to produce.

CAROL DAILY stood to urge the committee's support of the bill.

Testifying Opponents and Who They Represent:

Jim Jensen, Executive Director, Montana Environmental Information Center
Janet Ellis, Montana Audubon Legislative Fund
Gene Fenderson, Montana Construction and Trades Council
Kim Wilson, Sierra Club
Richard Parks, Legislative Chairperson, Bear Creek Council, an affiliate of Northern Plains Resource Council
Don Judge, Montana AFL-CIO
Stan Bradshaw, Montana Council of Trout Unlimited
Tony Schoonen, Montana Wildlife Federation, Skyline Sportsmens Club
Kate McMillen, self
Sherm Janke, self
Joan Montagne, Greater Yellowstone Coalition

Additional Opponent Testimony:

Jack Tuholske, attorney, Missoula (EXHIBIT 5)
Margery H. Brown, Attorney At Law, Missoula (EXHIBIT 10)

Opponent Testimony:

JIM JENSEN quoted the section of the Montana Constitution which guaranteed each of us a right to a clean and healthful environment. He said the Montana Environmental Policy Act was the Legislature's implementation of that constitutional mandate to provide remedies for the protection of the environmental support system. He said SB 327 would

effectively repeal MEPA by exempting the state agencies who were the focus of the act. He said that MEPA as currently administered was mostly a planning process that implemented society's demand that development of our natural resources be conducted in a way that acknowledged that there were values to a clean and healthful environment.

MR. JENSEN said another constitutional provision required that the public be able to participate in Montana's government. He said the Montana Public Participation statute enabled us as citizens to inform ourselves of the issues that have potential environmental effects. He said that was what MEPA was all about, with the public having the opportunity to speak and to help improve projects so that everyone's rights were balanced. He gave the example of Pegasus Mining Company's Beall Mine, the largest in Montana. He said that within five months, which included the preparation of an EIS, this was a producing, 100 million ton mine. He suggested that this was not obstructionism. He urged the committee to kill the bill.

JANET ELLIS testified as set forth in EXHIBIT 4.

GENE FENDERSON reminded the committee about the court case involving Montana Power Company's Haynes Pipeline. He said that situation brought his union and MEIC together to force the state of Montana and the corporations of Haynes and Montana Power to adhere to MEPA. He said he disagreed that all it took was a postage stamp to stop a project. He said the case brought out not only the environmental impacts, but the safety of the pipeline. That case proved that we had some of the most unsafe pipeline ever built in the state. He said that most of that pipeline has been taken out, at great expense to the state and the corporations. He said the law worked and was not necessarily easy to implement. He encouraged the committee to keep MEPA on the books.

KIM WILSON submitted testimony on behalf of Jack Tuholske, EXHIBIT 5. He said the Sierra Club opposed this bill because it represented a significant change in the way we were currently doing business in Montana. Currently, MEPA imposed an orderly and systematic process by which all state agencies could determine the environmental impact of a proposed project. He said this bill removed that orderliness as well as the state's ability to oversee all projects.

MR. WILSON said that contrary to the opponents testimony, not all actions were presumed to be major actions. He said only a few cases had actually been brought to court, and commented on the recent judgement made in favor of the plaintiff in the case of the North Fork Preservation Association versus the Department of State Lands. He said the comments of the judge exemplified the purpose of MEPA, quoting the judge as follows: "Ideally an EIS is designed to serve as a decision

making tool for the lead agency, and a means by which the concerned public can become involved in the decision making process. Public notice and involvement, inter-agency involvement and distribution for comment are key elements in the process of making an environmental assessment." Another comment was that "an EIS, should one be needed, should serve to assist agencies in making decisions before any significant steps are taken which may damage the environment. That purpose requires that the process be integrated with agency planning at the earliest possible time." He said the Sierra Club believed this bill would change all of that. As an attorney, he resented the implication that MEPA challenges were brought for the purposes of delay. He urged the committee to give the bill a do not pass.

RICHARD PARKS testified as set forth in EXHIBIT 6.

DON JUDGE testified as set forth in EXHIBIT 7.

STAN BRADSHAW said he would like to provide some clarification in regard to the statement made by proponents that any disinterested party could file a lawsuit under MEPA. He said advocacy groups could file lawsuits but they still had to meet a stringent test for legal standing. They had to have members who were directly affected.

MR. BRADSHAW said the proponents had a serious flaw in their understanding of how the law works, specifically in the area of burden of proof. He said the committee had heard that the burden is on the defendant once the suit is filed, which was not true. In his experience while working in state government and defending lawsuits under MEPA, the department made sure that the plaintiffs met the standing requirement. He said the plaintiffs had to show extensive and scientific proofs, that are expensive and difficult to acquire.

MR. BRADSHAW continued with a discussion of the mechanism by which any kind of threshold decision on the need to prepare an EIS could be made at all, a mechanism the bill would wipe out. Referring to the bill, he said it did not say that the agencies of the state were exempt from requiring environmental impact statements. It said that they were exempt from the provisions, which meant they did not even make a threshold decision, unless the agencies went through this declaratory ruling procedure. He said the irony of that particular procedure was that it was done under the Administrative Procedures Act. Under those rules, it was contemplated that someone would petition the agency for declaratory ruling. He said he had yet to see an agency petition itself.

MR. BRADSHAW said MEPA was about accountability. He said SB 327 would strip the government of any accountability for the environmental consequences of its actions. He said this was

a bad precedent, and urged the committee to vote against the bill.

TONY SCHOONEN urged the committee vote against SB 327. He said that in 1971, the citizens of Montana made it clear with the passage of MEPA that they desired and were entitled to participation in the process of evaluating state's actions that impacted the human environment. He said that feeling was still strong and was indeed an essential part of this citizens' participation process. He said his organization did not feel comfortable leaving the decisions about whether or not to do an EIS solely up to the state agencies, who were often subject to political pressures. He said sportsmen took a keen interest in how we deal with our environment, and strongly supported the provisions encompassed in MEPA. He suggested that with the lack of appeals to the current process, SB 327 seemed to be directed at solving a problem that did not exist.

MR. SCHOONEN disputed the opponents' claim that mining and timber were in a decline. He mentioned several examples of mines that had worked cooperatively with the people and the state and were now in operation. He offered a challenge to the proponents to prove that the smelter was closed in Anaconda because of environmental laws. He also asked them also to prove that the taxpayers in this state and nation were not already paying for the effects of these sites. He said appeals were filed because resources were important to the health and happiness of the citizens of this state.

KATE MCMILLEN said that when she voted, she chose people to represent her. She said she wanted state agencies to be representing her also. She said that 18 years ago the people decreed that state agencies should be responsible for at least investigating impacts on the environment. She said that responsibility had not changed, and that the environment still needed that protection. She urged the committee to vote against HB 327.

SHERM JANKE testified as set forth in EXHIBIT 8.

JOAN MONTAGNE testified as set forth in EXHIBIT 9.

Questions From Committee Members:

REP. BROOKE asked Kay Foster to describe the two industries that she referred to in her testimony. MS FOSTER said the first company was Boulder Gold that now had a chrome mining project in Stillwater and was proposing to build a chrome kiln near the mine. The other, the Anheiser Busch barley malting plant, was being considered for possible location in the Billings area.

REP. BROOKE, referring to the smelter, asked how many persons would be employed in the state through this project. MS

FOSTER said there would be 300 to 400 jobs in the construction phase. REP. BROOKE asked if she considered this smelter to be a minor project. MS FOSTER said she did not know.

REP. BROOKE said that in SB 327, at the outset everything would be considered minor. MS FOSTER replied that her understanding was that the agency could declare this a major project. REP. BROOKE asked if under this statute, it would be considered a minor project from the beginning. MS FOSTER said that was correct.

REP. RANEY asked Kay Foster if it was her understanding that with this bill, if those industries came to her community and the department found the project minor, the public in her town would have no say. MS FOSTER said if the department made that declaration without any background information or work, then she supposed that would be true. She said she did not believe that they worked in a vacuum. She said the public could still challenge the projects, but it would be up to them to prove their case, rather than the department.

REP. HARPER asked Jack Salmond if Montana had to substantially weaken its environmental laws to encourage economic development. MR. SALMOND responded that he felt this kind of legislation would encourage some small businesses.

REP. HARPER asked Carol Daily if she could you give him some examples of the businesses that did not locate in the Flathead area because of MEPA. MS DAILY said she did not know of any businesses at this time that had not located in the area, but was aware of businesses that were concerned about their ability to continue doing business in the Flathead.

REP. HARPER said he thought the concerns expressed by Ms Foster and Ms Daily would come to pass with this legislation. It was his interpretation that an EIS process would be automatically triggered. He said that when this bill passed, a company would know that if there was a chance that its action was going to have significant impact on the environment, any review at all would be a full EIS. He asked the sponsor what impact he thought that would have on businesses considering to come into the state. SEN. KEATING said that was not correct, and referred to his handout (EXHIBIT 1). He directed Rep. Harper to the yellow highlighted area, and said the amending language implied that the obligation for protecting the environment was still there. The determination of necessity for an EIS was written in the procedural rules. In the case of the chrome refinery, the department would still do the PER to determine the necessity of an EIS. He said anybody seeking a permit would still be subject to the potential of an EIS.

REP. HARPER asked the sponsor to explain how an environmental assessment (EA) was to be done. SEN. KEATING said he had just read it, and re-read the text of his exhibit. REP. HARPER asked what section of the law he was reading from. SEN. KEATING said he was reading from the procedural rules. REP. HARPER asked if they were the procedural rules under MEPA. SEN. KEATING replied yes, and said he had already pointed out that the section his bill amended had no effect on the rules and regulations that followed in the chapter. He said that SB 327 specified that all actions were considered minor unless determined to be major actions by the experts in the departments.

REP. HARPER said his point was that the way the language was written, you must go all the way or no where at all. He said the sponsor had thrown a major challenge and a major roadblock. SEN. KEATING objected, and said the requirement for a preliminary environmental review was still there. REP. HARPER said that it was his perception that the bill would exempt any state agency from all of the provisions of MEPA including reporting requirements to the Environmental Quality Council unless the balance of significant impact was tipped. He said if that balance did tip, in order to cover itself, under this law, a state agency would have to require an EIS. Thus he suggested that the bill was contrary to the sponsor's intent.

SEN. KEATING disagreed with Rep. Harper's interpretation. REP. HARPER countered, saying that the text of the law Sen. Keating was quoting, 75-1-104, was one of the parts of the law from which the department would be exempted by the bill. Therefore, he said, it would not exist unless the EIS process was triggered by the finding that the project constituted a major action. He suggested that Sen. Keating had caught himself in a Catch-22. SEN. KEATING replied that the drafters of SB 327 did not hold this view.

REP. COHEN said that in his opening, Sen. Keating had asserted that the gold mine on the Blackfoot was not going into operation because of MEPA. He said that he had read in the paper that it was due to the declining price of gold. He asked the sponsor to respond. SEN. KEATING said he had not referenced that mine in his testimony.

REP. COHEN said the sponsor had claimed the timber industry was adversely affected by MEPA, yet in the state the timber industry was cutting more logs than ever before. He asked Sen. Keating how he reconciled his statements with these facts. SEN. KEATING replied that the people from the wood products and forest industry, who had experience with the procedures of the application of MEPA through the departments and in the courts, had said there was an adverse impact from frivolous challenges. He said he had to believe them.

REP. COHEN said the sponsor also had stated that since 1971, there had been a constant down-hill flow for business in Montana. Yet, he said, the state had seen the growth of Colstrip and the power generating plants in that area, most of which occurred since 1971. He asked for Sen. Keating to comment. SEN. KEATING said Colstrip 1, 2, 3 and 4 were built under the Facility Siting Act, and were exempt from the MEPA procedure because they fell under the thresholds of that act. He added that there had been challenges made numerous times to Colstrip 3 and 4 in the district courts under the Siting Act. Northern Plains Resource Council challenged Montana Power and the department on those permits. Yet, he said, they never made a change at all in the plan and setting, and Colstrip 3 and 4 were built just like they were going to be built on the drafting board. He said all Northern Plains did was slow down the process, delay the building of the plant for one or two years and quadruple the cost of the plant. He said the consumers in Montana were now paying these costs.

REP. COHEN said Sen. Keating had implied that since the passing of MEPA, the oil industry had suffered, and yet the state had seen a boom in the industry when OPEC raised the price of oil, and when OPEC lowered the price, the state saw the oil industry fall apart. He said that during the past two years, while the oil industry had been exempt from MEPA awaiting the programmatic EIS, the oil industry's fortune seemed to be connected entirely to the price of crude. SEN. KEATING said the impact had been felt before the exemption under MEPA, which was a temporary exemption. He said there had been cases in which investors had millions of dollars of capital investment up front, and had been stopped in that process because of the permitting process under MEPA, the unnecessary costs of an EIS, or the challenge that an EIS was necessary. He said that impact was registered on others who wanted to do business in Montana, but were reluctant to do so because they did not want to subject themselves to that same kind of treatment that they have seen others get. He said drilling was still going on in North Dakota, Wyoming and Colorado in sensitive mountain areas just as in Montana. He said it wasn't entirely MEPA that was stopping the oil industry, but was also taxes.

REP. COHEN said there was one industry in the state that was actively involved in extracting natural resources, and that had come to the committee asking for regulations on itself. He said he was speaking of the mining industry. He asked how Sen. Keating accounted for its absence from this hearing. SEN. KEATING said representatives of that industry were absent because they were subject to the Hard Rock Mining Act primarily.

REP. ROTH asked Don Allen to relate how MEPA had affected the timber industry. MR. ALLEN said that as far as levels of harvest were concerned, the industry was at an all time

high. He said that he had no specific problem with the laws or rules under MEPA, but added that anything that would help shift the emphasis of the burden on those who were doing challenges was desirable. He said the timber industry had more problems with the National Environmental Policy Act (NEPA).

REP. RANEY asked Richard Parks if he recalled the controversy involved in the Colstrip 1, 2, 3, and 4, and asked him to respond to Sen. Keating's allegation that Northern Plains Resource Council (NPRC) had quadrupled the cost of those facilities. RICHARD PARKS said he was familiar with the controversy and that he doubted seriously that Northern Plains was responsible for quadrupling the costs. He questioned whether the costs were accurately calculated in the first place. Sen. Keating's charge was that NPRC had no effect on the ultimate design of the plans and that the organization was just doing it for the purpose of running up the costs. He rebutted this statement, stating that there were literally dozens of changes made and actually constructed because of environmental considerations that the original plans inadequately considered. He said those changes were the result of NPRC's activity, and made the plant more economically viable and sounder in operation. He said NPRC was proud to have been a part of that process.

REP. OWENS referred to a letter received by committee members from an independent petroleum landman, Louis Pinwell, and asked Janelle Fallan if she would comment on the oil rig status in the state and in the surrounding states. He said the letter reported that the rig count in Montana had dropped from 80 rigs in 1981, to 25 in 1985, to 3 rigs in 1989. MS FALLAN said that was accurate data, but hesitated to give any specific numbers on rig counts in the state of Wyoming and North Dakota. She said that generally, Wyoming's rig count was quite a bit more than Montana's, and North Dakota's was usually one or two more. She added that neither one of those states applied their equivalent MEPA legislation to the oil and gas industry, and also had lower tax rates than Montana.

REP. ADDY asked MsS Fallan if she could tell whether the drop in the rig count could be attributed more directly to: a) the world price of oil; or b) MEPA. MS FALLAN said as long as Rep. Addy said "more directly", the answer would be the world price of oil. She said it could be attributed largely to the world price of oil.

REP. ADDY asked Sen. Keating about the Anheiser Busch plant and the chrome processing plant. He said they both knew that Billings was in a depression. He said the jobs situation drove him to want to give these other two facilities chances to operate. He asked how the bill would change the threshold that they must meet in order to construct those facilities. SEN. KEATING said both facilities, with this

bill, could still be subject to an EIS, depending on the determination by the departments that would issue the various permits. He said that if the departments, in their determination in gathering the data to comply with the rules, decided after doing an environmental assessment (EA) and a preliminary environmental review (PER) that an EIS was not necessary, then the plants could go forward unless they were challenged in the district court by a third party. The difference that this amendment to MEPA would make would be that the burden of proof that the construction project constituted a major action would be upon the appellant, not the department. He stated that if an investor felt he/she would be tied up in judicial action regarding the intent of the law, he/she would be less likely to make an investment in Montana. He assured Rep. Addy that the chrome group had looked at Sheridan, Wyoming, for the location of the plant.

REP. ADDY asked Mr. Bradshaw to comment on Sen. Keating's answer. MR. BRADSHAW said that the provision in MEPA that triggered a PER or an EA was 75-1-201. That section requires a systematic, interdisciplinary approach and agencies would be exempted from this requirement by this amendment. He added that in the MEPA rules that describe the procedures for EA's, the statute cited was the same 75-1-201. Again, he said this would be eliminated by this amendment.

REP. ADDY said Sen. Keating seemed to be saying that all he wanted to do was reverse the burden of proof. He said that what he heard Mr. Bradshaw saying was that this bill threw the baby out with the bath water by taking all the procedural requirements out of the law. He asked if there was some way the bill could be re-written to do what Sen. Keating wanted to do without doing what Mr. Bradshaw did not want done. MR. BRADSHAW said he believed the bill addressed a problem that did not exist because any court challenge that was undertaken against an agency decision would have to be filed under the Montana Rules of Civil Procedure. He said the burdens of proof under those rules were as they were under any civil litigation--that the party bringing the case or the plaintiff had the burden of proof. He said that in looking at the language in the bill, it did not refer to judicial procedure at all. He said his point was that he did not think the problem existed, and therefore did not know how the law could be changed.

REP. ADDY asked DON ALLEN to explain how the "25-cent appeal process" worked. MR. ALLEN said this was a term used by the industry for the filing of appeals on timber sales by organizations and individuals. He said one of his concerns was the lack of commitment of resources of the individuals who filed the suits. He said the term referred to the cost of the stamp and did not refer to MEPA per se.

REP. ADDY continued, asking if Mr. Allen had stated that his problems were more with NEPA (National Environmental

Protection Act) rather than MEPA. MR. ALLEN said that with regards to the timber industry appeals, that was true. He said he was addressing more the attitude and the delays rather than the rules and laws themselves.

REP. ADDY asked, if the law were to provide that anyone who filed an action and did not base it on best knowledge, information and belief formed after reasonable inquiry, the state could sock them for everything it cost the industry, including attorneys' fees. He asked if that would be a sufficient deterrent to those kinds of actions. MR. ALLEN said the timber industry called for some sort of bonding system where those who had nothing at risk would have to file some sort of bond. Again, he said he was referring to the national level. REP. ADDY asked if the frivolous people Mr. Allen referred to could be deterred if the industry was able to get its costs, plus attorneys' fees, plus economic damages. DON ALLEN said he thought that was already in the existing law. He said the problem was to stop the delays for delay's sake.

REP. RANEY asked Stan Bradshaw to respond to this. MR. BRADSHAW said that in every MEPA lawsuit in which he had been involved, basically what the plaintiffs were attempting to do was to stop action from going forward. He said they were filing an action for injunctive relief, usually in the form of a temporary restraining order, or a preliminary injunction. He said that what inevitably happened was that, by law, the court could assess a bond on the party bringing the law suit so that, if they had stopped someone from going forward with the permitting process, and they failed to prove their case, they were liable for the damages and the costs. He gave a case in point. In 1977, a group of residents filed a law suit against the Anaconda Company, the Montana Department of Health and Environmental Sciences, the Department of State Lands and the Department of Highways trying to stop the further construction of a waste dump. In that case, he said they initially sought a temporary restraining order and a preliminary injunction. The court said they were required to put up a bond. They did not have the money for the bond, so the company was able to go forward with its work. He stated that the power to impose a bond was a strong deterrent against filing a lawsuit.

REP. GIACOMETTO asked Mr. Bradshaw if he could support SB 327 if the bill were to be written so that it changed the burden of proof in a direction that Sen. Keating was talking about by having to go to the district court. MR. BRADSHAW said the representative was asking him an impossible question. He said he believed that the burden of proof already rested on those people. He said he did not know what changes could be proposed to make that different. He said he supposed that a clause could be added that when a party wanted to file an action to enforce MEPA, it would have the burden of proof to make a prima facie case. But, he said, that would be

redundant, since it was already in the law. He said it happened in other statutes that redundant language was placed on the statute in order to alleviate a concern. He said if the sponsor wanted to strip this away and add an amendment that reiterated the current law, he would not object.

Closing by Sponsor:

SEN. KEATING, closed, citing Mr. Jensen's reference to the Montana Constitution. He stated that he agreed that the people were entitled to a healthful environment. However, he said he would like to go to the Declaration of Independence, which says that "we are endowed by our Creator with the pursuit of happiness". He said this meant to him the right of franchise, opportunity to work in whatever pursuits he chose to sustain his life and liberty. He said his job, the opportunity to provide for himself and his family, seemed to be superior to the ideal of a pristine environment.

He reiterated that despite Montana's history of resource exploitation, the state still had a beautiful environment. He noted that the Montana Environmental Information Center began in 1971, about the same time that MEPA was passed. In retrospect, he suggested that the demise of the state's economy coincided with the birth of MEIC.

SEN. KEATING said he had been looking for what he could do to bring the state back to a balance of a healthful environment, and wondered why the state should not be given the opportunity to develop its natural resources to provide jobs, while still retaining the environment.

He said that the staff of the state agencies charged with enforcing MEPA had the expertise and knowledge to determine the necessity of an EIS. He said they were better equipped to make those decisions than a district judge. He suggested that as the law stood at present, the state was allowing its experts to be second guessed by a district judge.

SEN. KEATING reiterated that what we now had was legislative intent that all permits were major actions. Therefore, a judge in making a decision would look at legislative intent and see 75-1-201 requiring an EIS, even though the department had already made its determination under a preliminary environmental review that it was not a major action. Again, he said the bill simply reversed that legislative intent. He suggested that the vast majority of actions were minor and were not challenged was a rationale for making them all minor actions. He said he knew that there had been decisions made to go elsewhere with plants, factories, and investment money that would have created jobs, because people had the impression that Montana's

environmental laws would require them to do something unnecessarily.

SEN. KEATING said he was a representative of the people. He said that although he was the sponsor of SB 327, the bill really belonged to this multitude of proponents at the hearing from all of the various industries in the state who were looking to the committee for relief under the law and for opportunity to do their jobs and to provide their livelihoods. He assured the committee that each one of them was just as environmentally conscious as all of those who were opposed to the measure. He suggested that there was a majority of people in Montana that found this amendment to the Montana Environmental Policy Act very necessary.

DISPOSITION OF SB 327

Motion: REP. O'KEEFE moved the bill BE NOT CONCURRED IN.

Discussion: REP. HARPER commented that the bill would require any industry that believed it would have any impact at all to go through the EIS process. He said there was no half-way process in this, and that the bill did not do what the sponsor thought it did. REP. GILBERT said the bill was not a good proposal. He said he was asked to sign and refused, because it went too far.

Amendments, Discussion, and Votes: None
Substitute Motion: REP. BROOKE moved to TABLE the bill.

Recommendations and Vote: The substitute motion CARRIED 10 - 6 on a recorded vote.

REP. ADDY, at a later time in the hearing, asked permission to speak on SB 327. He said he had problems with the bill, and had sensed in the testimony of the opponents some room for compromise. If an individual could work long enough with Sen. Keating, language could be arrived at that would accomplish what Sen. Keating said he wanted to do. He said it was his belief that that would be a restatement of the law; however, the result of this compromise would be a correct perception of the law on the part of Sen. Keating. But he disagreed with the statement that the state's economic woes began with the passage of MEPA in 1971. He stated that Montana had not seen a boom like it saw right after 1971. More correctly, he said, the state's woes started about the time that the price of oil dropped. With that clarification, he said he would like to change his vote on the motion to TABLE SB 327 to a yes.

There was no objection from the committee, and the vote did not change the outcome of the motion.

DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 3-15-89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Raney, Chairman	✓		
Rep. Ben Cohen, Vice-Chairman	✓		
Rep. Kelly Addy	✓		
Rep. Vivian Brooke	✓		
Rep. Hal Harper	✓		
Rep. Mike Kadas			✓
Rep. Mary McDonough	✓		
Rep. Janet Moore			✓
Rep. Mark O'Keefe	✓		
Rep. Robert Clark	✓		
Rep. Leo Giacometto	✓		
Rep. Bob Gilbert	✓		
Rep. Tom Hannah			✓
Rep. Lum Owens	✓		
Rep. Rande Roth	✓		
Rep. Clyde Smith	✓		

EXHIBIT 1
DATE 3-15-89
HB SB 327

state of Montana, in cooperation with the federal government and local governments and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can coexist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Montanans.

(2) In order to carry out the policy set forth in parts 1 through 3, it is the continuing responsibility of the state of Montana to use all practicable means consistent with other essential considerations of state policy to improve and coordinate state plans, functions, programs, and resources to the end that the state may:

(a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) assure for all Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) preserve important historic, cultural, and natural aspects of our unique heritage and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(e) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(f) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) The legislature recognizes that each person shall be entitled to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

History: En. Sec. 3, Ch. 238, L. 1971; R.C.M. 1947, 69-6503.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain a clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Comments of historic preservation officer, 22-3-433.

Renewable resource development, Title 90, ch. 2.

75-1-104. Specific statutory obligations unimpaired. Nothing in 75-1-103 or 75-1-201 shall in any way affect the specific statutory obligations of any agency of the state to:

(1) comply with criteria or standards of environmental quality;

(2) coordinate or consult with any other state or federal agency; or

(3) act or refrain from acting contingent upon the recommendations or certification of any other state or federal agency.

History: En. Sec. 6, Ch. 238, L. 1971; R.C.M. 1947, 69-6506.

75-1-105. Policies and goals supplementary. The policies and goals set forth in parts 1 through 3 are supplementary to those set forth in existing authorizations of all boards, commissions, and agencies of the state.

History: En. Sec. 7, Ch. 238, L. 1971; R.C.M. 1947, 69-6507.

Parts 4 through 10 reserved

Part 11 — Environmental Contingency Grant Program

75-1-1101. Environmental contingency account objectives.
75-1-1102. Grant program special revenue account created — revenues — allocation — limitations on appropriations.
75-1-1103 through 75-1-1110 reserved.
75-1-1111. Coordination of fund sources for grant program projects.
75-1-1112. Conditions of grants.

Chapter Cross-References

Beauty of the state, Preamble, Mont. Const.

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain a clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Youth Conservation Corps, Title 76, ch. 21.

State policy of consistency and continuity in the adoption and application of environmental rules, 90-1-101.

Part 1
General Provisions

Part Cross-References

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

75-1-101. Short title. Parts 1 through 3 may be cited as the "Montana Environmental Policy Act".

History: En. Sec. 1, Ch. 238, L. 1971; R.C.M. 1947, 69-6501.

Cross-References

State policy of consistency and continuity in the adoption and application of environmental rules, 90-1-101.

75-1-102. Purpose. The purpose of parts 1 through 3 is to declare a state policy which will encourage productive and enjoyable harmony between man and his environment, to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council.

History: En. Sec. 2, Ch. 238, L. 1971; R.C.M. 1947, 69-6502.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Department of Public Service Regulation, 2-15-2601.

75-1-103. Policy. (1) The legislature, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the

EXHIBIT 2
DATE 3-15-89
HB SB327

WITNESS STATEMENT

NAME [illegible] BILL NO. SB 327

ADDRESS [illegible]

WHOM DO YOU REPRESENT? Mont Chamber

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS:

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-34A
Rev. 1985

EXHIBIT 3
DATE 3-15-89
HB SB 327

Montana Oil & Gas Association

P.O. Drawer D
Shelby, Montana 59474
Phone 434-5518

House Natural Resources;
Senate Bill-327, Keating;
March 15, 1989.

Mr. Chairman & Committee;

Senate Bill 327 addresses a problem that has surfaced only twice on State leases in Montana, but is being used quite often on Federal lands within Montana. This is the fact that lands that have been leased for Mineral extraction are being blocked from that use by a simple request of appeal sent to the Department. The party appealing does't have to prove there is a problem, only to raise the question. Then the hopeful leasee has to prove there will not be a problem as was supposed in the appeal and this can and has been very expensive and time consuming to everyone involved.

I wish there was a quick and easy way to cure this type of problem, but that is not the case. It seems that this situation should and must be addressed and hopefully be sorted out to the best possible solution. If Montana is to return to it's prior level of Oil & Gas activities, this and many other basically minor ussues must be sorted out as best they can be. I agree we need regulation, and I helped design the Progimatic EIS that is just now being sorted out to what I hope will be a big help to developing our Natural Resources in a timely and proper manner. It has caused a lot of concern in everyone's mind during the time of developement, but if given sufficient time now for the NEW OIL & GAS BOARD to address all the data, and use it where it is needed and to refer to the rest as a text of information, it should be of a benefit for all of us involved with the future developement of Montana's Oil based resources.

But this will also have some problems that will need correcting and change till it does the best possible job for us; and I feel what Senate Bill-327 is attemping to do is the same thing. There is a flaw and it needs to be addressed and I hope corrected. If this bill is more than necessary, then correct it till it does as we feel it should, but at least address the isue and see if there can be some changes agreed upon by all parties, that will make our task better, and help rebuild our industry back to where we as a state can live the life style we deserve.

Thank you for this support;

Doug Abelin, Lobbiest for
Montana Oil & Gas Association.

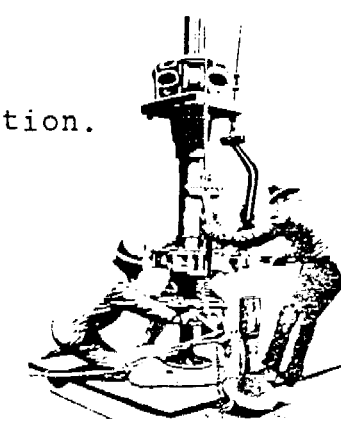

EXHIBIT 4
DATE 3-15-89
HB SB327

Montana
Audubon Legislative Fund

Testimony on SB 327
House Natural Resource Committee
March 15, 1989

Mr. Chairman and Members of the Committee,

My name is Janet Ellis and I'm here today representing the Montana Audubon Legislative Fund. The Audubon Fund is composed of nine Chapters of the National Audubon Society and has over 2500 members statewide.

The Audubon Fund opposes SB 327.

The Montana Environmental Policy Act (MEPA) is Montana's most important environmental law. It requires us to examine a "major action of state government" and its affect on our environment. A "major action of state government" is defined as an action "significantly affecting the quality of the human environment." Such actions require the preparation of an Environmental Impact Statement (EIS) - a process that allows alternatives to be examined and the public to have a voice when something "significant" is about to happen to their environment.

This policy makes sense. It allows Montanans to stop and think and plan for the future. It is a good state policy to examine things closely when something "significant" is about to happen to our environment.

SB 327 assumes that private industry is exempt from MEPA unless "an agency...in its discretion, on a case-by-case basis" decides otherwise. Giving agencies discretion when to enforce MEPA is not a good idea. It means that MEPA will be utilized more or less, depending on the Governor's office. A Governor sensitive to environmental concerns will demand MEPA is followed. An environmentally insensitive Governor will make sure agencies don't follow MEPA.

This discretionary application is poor state policy. It sends a message to industry planning to develop in Montana that we will change the rules on them at our whim. What kind of a message is that? There is nothing more irritating - or discouraging - than participating in something where the rules are continually changing. It doesn't make sense to send developers that very message - Montana's business climate will suffer at a time we are needing to encourage economic growth.

By making compliance with MEPA discretionary, SB 327 also discourages state agencies from doing any kind of environmental review of private projects. Currently state agencies must do an Environmental Assessment (EA) to determine if a proposed action requires the more extensive EIS. If SB 327 passes, EAs also become discretionary...What state agency, in times when they are straining to save pennies, will require an EA to be completed? We think this is a bad state policy. Planning is essential as Montana continues to grow. Our environment needs to be protected.

Since MEPA was established in 1971, it has worked to protect our environment. A total of 377 EISs and 2632 EAs (called PERs (Preliminary Environmental Reviews) until last year) have been completed. Of the 2632 EAs completed, only three times <u>in 17 years</u> have EAs been challenged in a court of law to require the more extensive EIS - three times in 17 years; three times in 2632. To us that indicates that the process is working. It shows consistency of application. We know that our environment is worth protecting - and this track record shows us that our best environmental law is being applied in a way that everyone has the same rules and everyone is following them.

You have heard that passage of SB 327 will improve Montana's business climate. You have heard that passage of SB 327 will reduce the number of "frivolous lawsuits" being filed. I want to suggest to you that passage of

SB 327 will do just the opposite of what proponents say it is going to do.

The only reason that lawsuits are filed is that people feel that they will win that lawsuit. If MEPA was not consistently followed, I would suggest to you that there would have been a lot more lawsuits than three in 17 years. If SB 327 passes, you will leave application of MEPA up to the discretion of a state agency. Such discretion will discourage - not encourage - consistent application of the law. When you get inconsistent application, you degrade Montana's buisness climate. When you get inconsistent application of the law, you will encourage - not discourage - more lawsuits.

MEPA is Montana's environmental safety net. Planning is essential as Montana continues to grow. MEPA lets us examine our decisions when something "significant" is about to happen to our environment. SB 327 effectively destroys MEPA. Why shouldn't we look at all decisions that could potentially "significantly" affect our environment? There is no harm in looking at the decisions, unless we fear what they might mean for us.

The Audubon Fund urges you to vote "Do Not Pass" on SB 327 and continue to protect Montana's environment.

Thank you.

JACK TUHOLSKE
ATTORNEY AT LAW

240 N. HIGGINS, SUITE 2
P.O. BOX 7458
MISSOULA, MT 59807
(406) 721-6986

EXHIBIT 5
DATE 3-15-89
HB SB 327

March 15, 1989

Representative Raney
Chairman, House Natural Resources Committee
State Capitol
Helena, MT 59601

Re: Senate Bill 327

Dear Chairman Raney and members of the Committee:

I am an attorney is Missoula who specializes in natural resource law. I am also adjunct Professor of environmental law at the University of Montana School of Law. I am writing to urge that your committee reject Senate Bill 327. This bill would essentially destroy the Montana Environmental Policy Act. Based on my experience as an attorney in this field, I feel that MEPA is a sound legislative directive that helps ensure that governmental decisions consider environmental factors in the decision-making process.

MEPA is often mistakenly characterized as a statute preventing economic and resource development within the state of Montana. This mistaken characterization is not supported by the statute, judicial interpretations, or MEPA's practical application. MEPA does not dictate that activities cannot occur if there are adverse environmental consequences. What MEPA requires is that these consequences are disclosed and analyzed, both to the public and the agency. The result is better decision-making.

I was the attorney for the Clark Fork Coalition, a Montana-based environmental group, in a dispute concerning the issuance of a permit by the Montana Water Quality Bureau for the benefit of Stone Container Corporation's Frenchtown mill. During that process, a Preliminary Environmental Review was prepared pursuant to MEPA. This document served as the basis for negotiations and discussions that led to a resolution of the issues. In this instance, the conservation groups, Water Quality Bureau and Stone Container successfully negotiated a resolution to the issues of water quality, which at the same time permitted Stone Container to receive its discharge permit. The fact that MEPA was involved in the process demonstrated that a PER or Environmental Impact Statement can indeed provide necessary information and serve as a focus for discussion about the project. The fact that a PER or EIS is involved did not prevent or, in this case, even delay the permit from being approved.

EXHIBIT 5
DATE 3-15-89
SB 327

In sum, MEPA is an integral part of Montana's environmental laws. As citizens, we should be proud of our environmental heritage and of the laws that we have passed to help protect that heritage. The amendments to MEPA contained in SB 327 would totally destroy the effectiveness of the Montana Environmental Policy Act.

Sincerely,

Jack Tuholske

JT:ca

EXHIBIT
DATE 3-15-89
HB SB 327

NORTHERN PLAINS RESOURCE COUNCIL

Field Office
Box 858
Helena, MT 59624
(406) 443-4965

Main Office
419 Stapleton Building
Billings, MT 59101
(406) 248-1154

Field Office
Box 886
Glendive, MT 59330
(406) 365-2525

TESTIMONY OF THE NORTHERN PLAINS RESOURCE COUNCIL OPPOSING SB 327.

March 15, 1989

Mr. Chairman, members of the Committee; my name is Richard Parks. I own the Parks' Fly Shop in Gardiner, MT. and am a member of the Bear Creek Council, an affiliate of the Northern Plains Resource Council. I am the Secretary and Legislative Chairman of NPRC. Senator Keating's bill rips the guts out of MEPA and for what? To better protect the environment? Jobs? On the contrary this is an anti-jobs bill.

SB-327 is an anti-jobs bill because it presumes some things about Montana and our potential for economic development that are not accurate. It ignores the facts that our economic base is agriculture, that our best growth segment is the travel business and that a high quality environment is a major factor for new businesses that consider locating in Montana. This bill indulges in the strange mathematics of throwing out jobs we already have and jobs we can readily develop through the destruction of their environmental base. This is not all, the bill sacrifices the constructive interplay between involved citizens and potential developers. I will cite two instances from the project with which I am most familiar, the Jardine Joint-Venture's Mineral Hill Mine now under construction in Jardine. The original location of the wash-house drainfield would have cost the company money as well as put Bear Creek at risk. No provision had been made for on-site water storage to accommodate the probability of Bear Creek, the mine's water source, from freezing, system failure or fire. This has been corrected and has the obvious potential to save the company's investment in the latter case.

Since MEPA's enactment, hundreds of environmental assessments have been done, 2632 at last count, and of those only 377 have lead to full blown EIS's. An EIS, when required, typically runs less than 2% of the project cost, not an overwhelming burden. Only ½ of the preliminary environmental reviews have been challenged in court and in both cases the court determined that in fact an EIS was required. This record does not support the sponsor's argument that state reviewers are perfect or that MEPA results in either environmental or judicial radicalism.

EXHIBIT 6
DATE 3-15-89
HB SB 327

MEPA ranks in the lower half of the state environmental protection laws in its "tooth count." Even so it has worked reasonably well. The reason it has worked is because it is THERE and compels anyone with a project to consider the environmental impacts and the means to mitigate them. Because it is mandatory citizens have a means of entering the process and this in turn is an incentive for developers, in their own interest, to do it right the first time. This relationship is what this bill deliberately sacrifices by uncoupling MEPA compliance and permitting procedures.

We ask for a DO NOT PASS vote on SB-327. Thank you.

EXHIBIT #7
DATE 3-15-89
HB SB 327

MONTANA STATE AFL-CIO
APRIL 29 1956

Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

Testimony of ~~Jim Murry~~ Don Judge before the House Natural Resources Committee on Senate Bill 327, March 15, 1989

Mr. Chairman and members of the Committee, for the record, I am ~~Jim Murry, Executive Secretary of~~ Don Judge representing the Montana State AFL-CIO. We are here today in opposition to Senate Bill 327 which would make discretionary state agency actions under the Montana Environmental Policy Act.

The position of the Montana State AFL-CIO on issues of environmental protection is long-standing and in the best interests of Montana's working men and women. We believe that strong, sound environmental protection laws lead to proper development of our state's natural resources and to more and better jobs. Allow me to quote from a resolution which was passed at our 1974 Annual Convention:

"Montana's environmental laws, although stringent, are not unreasonable. They are based upon a century-long bitter experience. A century of exploitation that has left portions of our state a heritage of unsightly mine dumps and placer tailings, of air polluted by the emissions of smelters and oil refineries, of once sparkling trout-laden streams poisoned by mining, lumber and pulp wastes. We are determined that that experience will not be repeated in the century ahead.

"This is not to say we are against the wise use of our resources. Quite to the contrary, Montana needs jobs that increased resource utilization will create. However, we know that the technology is available to keep the adverse environmental impact of the exploitive industries to levels which will do a minimum of damage to our environment."

MEPA is one of the laws which helps us to protect our environment and way of life. It serves to look at the environmental consequences of our actions. Certainly, the agencies of state government should know, understand and work with environmental concerns which will affect not only us but generations to come. Jobs and environmental protection can and should go hand-in-hand. This legislation is simply unnecessary and could prove harmful to our state in the long run.

I urge you to defeat this attempt to weaken our state's approach to maintaining a quality environment.

PRINTED ON UNION MADE PAPER

EXHIBIT #8
DATE 3-15-89
HB SB 327

TESTIMONY OF
SHERMAN H. JANKE

Concerning Senate Bill 327, 1989 Montana State Legislature
before the House Committee on Natural Resources

Chairman Raney and members of the committee:

My name is Sherman H. Janke; I reside in Bozeman at 415 North 17th Avenue; this testimony is presented on behalf of the Montana Chapter of the Sierra Club, which I serve as chairman. Professionally, among other things, I am an investor and manage rather substantial holdings in various securities and in real estate.

By way of demonstrating commitment to investing in Montana, at least one-fourth of the holdings mentioned above are within Montana, with one tenth of the total consisting of hospital, university system, water and sewer system, and housing bonds. It follows that the business climate in our state is of concern to me.

Respecting SB 327, my perception is that the real issue is the Montana business climate, with the bill being at least the sponsor's attempt to enhance the same by lessening environmental regulatory requirements in a particular sphere of activity, with the hope that such activity would therefore increase.

In this regard it is instructive to examine the reasons for which at least one business, not of an extractive nature, came to locate within the last year in Bozeman, namely the telemarketing division of Patagonia, the outdoor clothing and related gear merchandiser headquartered in California.

An interview with the Bozeman supervisor of operations produced the following:

> First, because telemarketing involves information transfer, the company could have, in principle, located anywhere it chose in the U. S. A. Bozeman was chosen not only so that telephone salespersons could be users of the products in a prime natural setting, but because of high quality amenities including clean air, pure water, and an extremely attractive natural setting. In addition, the company wished to avoid the transportation gridlock for its employees to and from the workplace.
>
> Secondly, the location of this operation in Bozeman produced 40 year-around jobs for persons who were already Montanans, with only 9 transfers in, at wages even for starting personnel well above minimum.
>
> Thirdly, the company would consider shifting other business operations to Bozeman if in its judgment the community and county were conscientiously engaged in long term planning for handling increased traffic, for community appearance/esthetics, and for population growth. Stated simply the company does not want to become part of the problem--the problems associated with the growth brought on by its presence if the community is not carefully planning on how to deal with those problems. Patagonia emphasizes that Bozeman should energetically plan for the future while it still has the opportunity to control trends.

EXHIBIT 8
DATE 3-15-89
HB SB 327

Fourthly, the company wishes to provide long-term, sustainable employment, avoiding the "boom and bust" cycles typical of the extractive industries.

In our view, if there is majority opinion that additional business activity should be attracted to Montana, the example given is precisely the kind we should be inviting and encouraging. Its operation is relatively benign to the environment and energy efficient (although it could be made more so if the operators worked at monitors in their residences), the vast majority of its employees were recruited from residents, and they are decently to very well paid.

It is extremely instructive that such a company, having first hand experience in a poorly or under-regulated and unrestricted growth area, is stating that as a condition for further transfer to our area, it would have to see increased rather than decreased environmental planning, i.e., regulation.

Finally, turning to the oil and gas industry in Montana, it cannot be said with concrete evidence that the industry would have been more active without MEPA. We didn't run the experiment, so to speak. In any case our contention is that oil and gas activity has and does hinge much more directly on the price of crude oil rather than on the state's environmental regulation.

We urge a negative committee vote on SB 327.

Thank you for the opportunity to present testimony.

Sherman H. Janke

EXHIBIT 9
DATE 3-15-89
HB SB 327

WITNESS STATEMENT

NAME: Joan Montagne DATE: 3/15

ADDRESS: 1105 S. Tracy, Bozeman, MT

PHONE: 587-2406

REPRESENTING WHOM? Greater Yellowstone Coalition

APPEARING ON WHICH PROPOSAL: SB 327

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? XXXX

COMMENTS: The Greater Yellowstone Coalition is concerned with the management of the Greater Yellowstone ecosystem, the largest intact ecosystem in the temperate zones of the earth. Little by little - each nibble by itself almost unnoticeable, the working components of the ecosystem are being destroyed. ¶ In Montana, the Greater Yellowstone Coalition has relied on the investigations of MT State agencies when potentially major actions are proposed. ¶ The same game rules apply to everyone whether you are the Jardine gold mine on Yellowstone Nat'l Park's boundary, oil and gas development or what was originally claimed to be a minor subdivision on the banks of the Yellowstone River. The Church Universal Triumphant certainly deserved to be reviewed under MEPA if all expected 3000 people move in. The MT citizen has the right to know how their future environmental health will be affected even in Counties with no development regulations. Let's give future generations of Montana the opportunity to have something

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

left to make a decision about.

This State may be undergoing temporary economic ~~times~~ hard times but we can hold our heads high that with MEPA we are thinking of the future heath and well being of Montana

~~defeat this short sighted bill~~

EXHIBIT 10
DATE 3-15-89
HB SB327

MARGERY HUNTER BROWN
ATTORNEY AT LAW
WILDCAT ROAD, EAST RATTLESNAKE
ROUTE #6, MISSOULA, MONTANA 59801

March 15, 1989

To: Members of the Committee on Natural Resources
Montana House of Representatives

Re: Senate Bill 327

I fully anticipate that your regard for Montana's future will result in adverse committee action on Senate Bill 327. The strongest argument against this measure is found in two sections of Montana's Constitution. You know them well:

-- Article II, Section 3, Declaration of Rights, in which "a clean and healthful environment" is included in Montanans' inalienable rights.

-- Article IX, Section 1, Environment and Natural Resources, which provides: Protection and Improvement. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.
(2) The legislature shall provide for the administration and enforcement of this duty.
(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Members of the Committee on Natural Resources, these provisions are constitutional, not aspirational. Their implementation should never be determined by changes in political climate in any of the three branches of government. The integrity and force of the Montana Environmental Policy Act must be maintained if the legislature is to discharge its constitutional mandate. I have great faith that you will respond to Senate Bill 327 in a manner that will reaffirm the importance of a clean and healthful environment to which Montanans have given constitutional status, an importance that remains undiminished for the majority of Montanans today.

Margery H. Brown
Margery H. Brown

ROLL CALL VOTE

HOUSE NATURAL RESOURCES COMMITTEE

DATE 3-15-89 BILL NO. SB 327 NUMBER 1

NAME	AYE	NAY
Rep. Hal Harper	✓	
Rep. Tom Hannah		✓
Rep. Mike Kadas	✓	
Rep. Mary McDonough	✓	
Rep. Lum Owens		✓
Rep. Vivian Brooke	✓	
Rep. Robert Clark		✓
Rep. Mark O'Keefe	✓	
Rep. Leo Giacometto		✓
Rep. Bob Gilbert	✓	
Rep. Kelly Addy	✓	
Rep. Clyde Smith		✓
Rep. Janet Moore	✓	
Rep. Rande Roth		✓
Rep. Ben Cohen, Vice-Chairman	✓	
Rep. Bob Raney, Chairman	✓	

TALLY 10 6

Claudia Montague
Secretary

Bob Raney
Chairman

MOTION: to table SB 327

Form CS-31
Rev. 1985